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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1953

No. 217

SUPERIOR FILMS, INC., APPELLANT,

vs.

DEPARTMENT OF EDUCATION OF THE STATE OF OHIO, DIVISION OF FILM CENSORSHIP, CLYDE HISSONG, SUPERINTENDENT

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

FILED JULY 30, 1953

Probable jurisdiction noted October 12, 1953

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

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SUPERIOR FILMS, INC., APPELLANT,

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DEPARTMENT OF EDUCATION OF THE STATE OF OHIO, DIVISION OF FILM CENSORSHIP, CLYDE HISSONG, SUPERINTENDENT

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

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IN THE SUPREME COURT OF OHIO

No. 33265

SUPERIOR FILM, INC., Plaintiff,

vs.

DEPARTMENT OF EDUCATION OF THE STATE OF OHIO, DIVISION OF FILM CENSORSHIP, CLYDE HISSONG, Superintendent, Defendant

PETITION FOR APPEAL—Filed June 26, 1953

To the Chief Justice of the Supreme Court of the State of Ohio:

Superior Films, Inc., your petitioner, respectfully shows:

1. Petitioner is the plaintiff in the above entitled cause.

2. Petitioner filed in this court, on September 25, 1952, a petition against the defendant, pursuant to the provisions of Ohio General Code Section 154-47h, and thereafter with leave of this court in this cause filed its amended petition, to vacate and set aside the order of the defendant, made and entered September 16, 1952, rejecting plaintiff's motion picture entitled "M" for distribution and exhibition in the State of Ohio. Judgment was rendered therein for the defendant on the 29th day of April, 1953.

3. In said cause there is drawn in question the validity of the statutes of the State of Ohio, to-wit, Ohio G. C. Sec-
[fols. 3-5] tions 154-47—154-47i, inclusive, on the ground of their being repugnant to the Constitution of the United States, and the decision is in favor of their validity, in that the court held said Ohio G. C. Sections 154-47—154-47i, inclusive, to be not violative of the First and Fourteenth Amendments of the Constitution of the United States.

Petition presents to the court herewith a separate typewritten statement disclosing the basis on which it is contended that the United States Supreme Court has jurisdic-

tion on appeal to review said judgment, as required by Rule 12 of the Rules of the Supreme Court of the United States.

The errors on which plaintiff claims to be entitled to an appeal are those above indicated, and more fully set out in the assignment of errors filed herewith.

Wherefore, petitioner prays for the allowance of an appeal from the Supreme Court of the State of Ohio to the Supreme Court of the United States in order that the decision of the Supreme Court of the State of Ohio may be examined and reversed, and also prays that a transcript of the record, proceedings, exhibits and papers in this case, duly authenticated by the Clerk of the Supreme Court of the State of Ohio, may be sent to the Supreme Court of the United States, as provided by law.

Dated June 26, 1953.

Francis J. Wright, Attorney for Superior Films, Inc.
Of counsel: John C. Harlor; Michael Gesas.

[fol. 6] [File endorsement omitted]

IN THE SUPREME COURT OF OHIO

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 26, 1953

Superior Films, Inc., plaintiff in the above entitled cause, hereby assigns the following errors in the record and proceedings in said cause upon which it will rely in the prosecution of its appeal in said cause from the judgment of the Supreme Court of the State of Ohio to the United States Supreme Court:

The Supreme Court of Ohio erred:

(1) In holding that Ohio G. C. Sections 154-47—154-47i, inclusive, do not constitute on their face and as applied to the plaintiff a prior restraint upon and censorship of the freedom of speech and of the press repugnant to the First and Fourteenth Amendments of the Constitution of the United States.

(2) In failing to hold that Ohio G. C. Sections 154-47—154-47i, inclusive, constitute on their face and as applied to

plaintiff a prior restraint upon and censorship of the freedom of speech and of the press repugnant to the First [fol. 7] and Fourteenth Amendments of the Constitution of the United States.

(3) In holding that Ohio G. C. Sections 154-47—154-47i, inclusive, which authorize a prior restraint upon and censorship of the freedom of speech and of the press for which the criteria are the terms "moral, educational or amusing and harmless" are not on their face and as applied to plaintiff indefinite and vague standards incompatible with and repugnant to the requirements of the First and Fourteenth Amendments of the Constitution of the United States.

(4) In failing to hold that Ohio G. C. Sections 154-47—154-47i, inclusive, which authorize a prior restraint upon and censorship of the freedom of speech and of the press for which the criteria are the terms "moral, educational or amusing and harmless" are on their face and as applied to plaintiff, indefinite and vague standards incompatible with and repugnant to the requirements of the First and Fourteenth Amendments of the Constitution of the United States.

(5) In holding that Ohio G. C. Section 154-47—154-47i, inclusive, and the order of rejection of September 16, 1952, issued by the defendant pursuant thereto on their face and as applied to ban plaintiff's motion picture "M" are not repugnant to the First and Fourteenth Amendments of the Constitution of the United States.

(6) In failing to hold that Ohio G. C. Sections 154-47—154-47i, inclusive, and the order of rejection of September 16, 1952, issued by the defendant pursuant thereto on their face and as applied to ban plaintiff's motion picture "M" are repugnant to the First and Fourteenth Amendments of [fols. 8-10] the Constitution of the United States.

(7) In holding that Ohio G. C. Sections 154-47—154-47i, inclusive, to the extent that they provide for the payment of a fee prior to the distribution and exhibition of motion pictures do not impose an undue burden upon the distribution and exhibition of motion pictures and on their face and as applied to plaintiff are not repugnant to the First and Fourteenth Amendments of the Constitution of the United States by reason thereof.

(8) In failing to hold that Ohio G. C. 154-47—154-47i, inclusive, to the extent that they provide for the payment of a fee prior to the distribution and exhibition of motion pictures impose an undue burden upon the distribution and exhibition of motion pictures and on their face and as applied to plaintiff are repugnant to the First and Fourteenth Amendments of the Constitution of the United States by reason thereof.

For which errors plaintiff prays that said judgment of the Supreme Court of the State of Ohio, dated April 29, 1953, in the above entitled cause, be reversed, and that said court be ordered to enter a judgment in favor of said Superior Films, Inc. and that it be awarded its costs.

Dated at Columbus, Ohio, this 26th day of June, 1953.

Francis J. Wright, Attorney for Superior Films, Inc.

Of counsel: John C. Harlor; Michael Gesas.

[fol. 11] [File endorsement omitted]

IN THE SUPREME COURT OF OHIO

[Title omitted]

ORDER ALLOWING APPEAL—Filed June 26, 1953

The petition of Superior Films, Inc. for an appeal in the above entitled cause to the Supreme Court of the United States from the Supreme Court of the State of Ohio and the assignment of errors filed therewith, and the record of said cause having been considered, it is

Ordered that an appeal be and is allowed to the Supreme Court of the United States from the Supreme Court of the State of Ohio as prayed in said petition and that the Clerk of the Supreme Court of the State of Ohio shall prepare and certify a transcript of the record and proceedings in the above cause and transmit the same together with all exhibits to the Supreme Court of the United States within ten (10) days from the date hereof.

It is further ordered that said Superior Films, Inc. shall give good and sufficient security in the sum of Five Hundred

[fol. 12] Dollars ($500.00) for all costs on appeal, and said petitioner having presented to this court a bond in the sum of $500.00 with Travelers Indemnity Company of Hartford, Connecticut, as surety, it is ordered that the same be and it is hereby approved.

Dated June 26, 1953.

Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio. 6/26/53.

Francis J. Wright, Attorney for Superior Films, Inc.
Of Counsel: John C. Harlor, Michael Gesas.

[fols. 13-52] Citation in usual form showing service on Gwynne B. Myers, omitted in printing.

[fols. 53-54] Cost Bond on Appeal for $500.00 approved June 26, 1953, omitted in printing.

[fols. 55-56] [File endorsement omitted]

IN THE SUPREME COURT OF OHIO

NOTICE OF APPEAL—Filed September 25, 1952

Superior Films, Inc., plaintiff, hereby gives notice of appeal to the Supreme Court of Ohio from an order rendered by the Division of Film Censorship, Department of Education of the State of Ohio as contained in Certificate of Censorship No. 392, September 16, 1952, rejecting plaintiff's application for approval of a motion picture owned by it for distribution and exhibition in the State of Ohio.

Said appeal is on questions of law and is taken pursuant to Ohio G. C. Section 154-47h.

(S.) John C. Harlor, Wright, Harlor, Purpus, Morris & Arnold, 17 South High Street, Columbus 15, Ohio, Attorneys for Superior Films, Inc.

[fols. 57-62] [File endorsement omitted]

IN THE SUPREME COURT OF OHIO

WAIVER OF SERVICE OF SUMMONS AND ENTRY OF APPEARANCE —Filed September 25, 1952

Service of summons upon the defendant, Division of Film Censorship, Department of Education of the State of Ohio, Clyde Hissong, Superintendent, and service of the petition herein on said defendant is hereby waived and defendant's appearance is entered, reserving, however, to said defendant all rights he would or might have if service of summons were made herein upon said defendant.

C. William O'Neill, Attorney General, by (S.) G. B. Myers, Assistant Attorney General, Attorney for Defendant.

[fol. 63] IN THE SUPREME COURT OF OHIO

AMENDED PETITION—Filed November 18, 1952

Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Delaware and is engaged in the busines of producing motion pictures for ultimate distribution and exhibition in the State of Ohio and elsewhere.

Plaintiff further says that it is the producer and owner of a motion picture entitled "M"; that said motion picture is property which derives its value from the right of the owner to sell it or to license its distribution to owners and operators of motion picture theaters for the purpose of showing the same to the public on payment of an admission charge; and that said motion picture artistically and dramatically publishes important social problems and either clearly suggest solutions therefor or so dramatically presents each such problem that anyone having an opportunity to see the picture will become vitally interested in such problems and will more readily respond to efforts at a solu-
[fol. 64] tion thereof in the community in which he lives.

Plaintiff further says that Ohio G. C. Sections 154-47–154-47i, inclusive, requires that prior to distribution or exhibition of said motion picture the same must be submitted, with a certain fee, to the Division of Film Censor-

ship of the Department of Education of the State of Ohio; that said G. C. Sections 154-47–154-47i, inclusive, provide that said Division shall view said moving picture and approve it only if it is of a moral, education or amusing and harmless character; and that without such approval, distribution or exhibition is prohibited.

Plaintiff further says that the defendant at all times mentioned herein is and has been charged with the duty of administering the laws contained in Ohio G. C. Sections 154-47–154-47i, inclusive; that on September 11, 1952, plaintiff submitted to defendant a certain print of said motion picture, consisting of ten reels, accompanied by the required fee of $30.00, for viewing and censorship; and that on September 16, 1952, the defendant rejected said film for distribution and exhibition in the State of Ohio as more fully set forth in Certificate of Censorship No. 392 issued by the defendant under date of September 16, 1952, for the reasons and upon the grounds that, in the opinion of said defend-
[fol. 65] ant, said motion picture "M" is "harmful."

Plaintiff further says that said Ohio G. C. Sections 154-47–154-47i, inclusive, constitute on their face and as applied to petitioner, a prior restraint and censorship repugnant to the First and Fourteenth Amendments of the Constitution of the United States and Article I, Section 2 and Section 11 of the Constitution of the State of Ohio.

Plaintiff further says that said Ohio G. C. Sections 154-47–154-47i, inclusive, which authorize a prior restraint and censorship for which the criteria are the terms "moral, educational or amusing and harmless" are, on their face and as applied to petitioner, indefinte and vague standards incompatible with and repugnant to the requirements of the First and Fourteenth Amendments of the Constitution of the United States and Article I, Section 2 and Section 11 of the Constitution of the State of Ohio.

Plaintiff further says that the said Ohio G. C. Sections 154-47–154-47i, and the order of September 16, 1952 pursuant thereto, on their face and as applied to ban petitioner's motion picture "M" are repugnant to the First and Fourteenth Amendments of the Constitution of the United States, Article I, Section 2 and 11 of the Constitution
[fol. 66] of the State of Ohio and the laws of the State of

Ohio, said order being arbitrary, unreasonable and an abuse of discretion.

Plaintiff further says that the said Ohio G. C. Sections 154-47–154-47i, inclusive, to the extent that they provide for the payment of a fee prior to the distribution and exhibition of motion pictures, impose an undue burden upon distribution and exhibition of motion pictures and, on their face and as applied to petitioner, are repugnant to the First and Fourteenth Amendments of the Constitution of the United States and Article I, Section 2 and Section 11 of the Constitution of the State of Ohio.

Plaintiff further says that this action is commenced in accordance with the provisions of G. C. 154-47h pursuant to which the Supreme Court of Ohio is vested with exclusive jurisdiction to hear and determine an action to review an order of the Division of Film Censorship of the Department of Education of Ohio.

Wherefore, Plaintiff prays that this Court vacate and set aside the order of the defendant rejecting its motion picture film entitled "M" for distribution and exhibition in the State of Ohio and for such other and further relief to [fol. 67] which plaintiff may be entitled in the premises.

Wright, Harlor, Purpus, Morris & Arnold, by (S.)
J. C. Harlor, Attorneys for Superior Films, Inc.

[File endorsement omitted.]

[fol. 68] IN THE SUPREME COURT OF OHIO

ANSWER—Filed December 15, 1952

Now comes the defendant and in answer to the petition filed herein makes the following admissions and denials:

Admits that defendant is and has been charged with the duty of administering the laws contained in Ohio General Code Sections 154-47 to 154-47i, inclusive;

Admits that on September 11, 1952, plaintiff submitted a certain print of the motion picture "M" to defendant, accompanied by the required fee of $30.00, for viewing and censorship;

Admits that on September 16, 1952, defendant rejected said film for distribution and exhibition in the State of Ohio by the issuance of Certificate of Censorship No. 392. Defendant denies each and every other allegation.

(S.) C. William O'Neill, Attorney General. (S.) Robert E. Leach, Chief Counsel. (S.) Gwynne B. Myers, Ass't Atty. Genl.

[File endorsement omitted.]

[fol. 69] IN THE SUPREME COURT OF OHIO

STIPULATION OF FACTS

The parties, by their respective counsel, hereby stipulate and agree that the stipulations hereinafter contained are true to the extent that they are relevant, material and competent to the issues in this case and may be considered as proven by the Supreme Court of Ohio.

(1) Superior Films, Inc. is a corporation organized and existing under and by virtue of the laws of the State of Delaware and is engaged in the business of producing motion pictures for ultimate distribution and exhibition in the State of Ohio and elsewhere.

(2) The motion picture "M" is owned by plaintiff, was produced by its president, Seymour Nebenzal, and the particular print of said motion picture which is the subject of this proceeding consists of ten reels of film enclosed in two metal cases weighing approximately fifty pounds each which have been marked for identification as plaintiff's Exhibit A, and is in the possession of the defendant and there-
[fol. 70] fore available for showing to the Court.

(3) The "shooting script" composed of 19 pages, in pamphlet form and marked for purposes of identification as plaintiff's Exhibit B, contains all dialogue used in said motion picture "M" and is attached and made a part of this stipulation.

(4) The motion picture "M" has been approved by every official censoring agency to which the present form of said motion picture has been presented, including the agencies

of such states as New York, Pennsylvania, Kansas, Virginia and Maryland, and such cities as Boston, Detroit and Chicago. The British Board of Film Censors has approved an uncut print of said motion picture with an "X" rating, the effect of which legally limited the showing of said motion picture to persons over sixteen years of age.

Such private agencies as the National Board of Film Review, the American Library Association, the American Jewish Committee, the General Federation of Womens Clubs, the Protestant Motion Picture Council, and the National Congress of Parents and Teachers have reviewed said uncut print of said motion picture and given it a "star" award as "a picture of exceptional merit;" while the National [fol. 71] Legion of Decency has given said uncut form of said motion picture a rating of "B"—morally objectionable in whole or in part.

As of September, 1951, said motion picture had been publically shown, in one or another of its versions, over 700 times in 47 states without incident.

(5) Said Seymour Nebenzal originally produced a motion picture entitled "M" as a German language production with English sub-titles which was submitted to and approved by the Ohio Censor Board, without elimination, during the week ending June 10, 1933, and with the exception of the cast and language the plot of said picture did not materially differ from the film which is the subject of this action. Said German language production was selected by the Museum of Modern Art, New York City, to be preserved for posterity in its film library as a classic film of extraordinary artistic merit.

(6) The amount of censorship fees collected and the disposition thereof by the Department of Education as disclosed by the reports of the Auditor of State are as shown by the following schedules:

January 1, 1943—December 31, 1943

Education, Department of		
Film Censorship, Division of		
Censorship Fees	$172,956.00	
Substitute Leaders	39.90	
Total Collections		$172,995.90
Distributed as Follows:		
Operation of Division	22,220.00	
To general revenue fund	75,387.95	
		$97,607.95

[fol. 72]

Support of visual education Rotary—sec. 871-48 G. C.		75,387.95	
Total Distribution			$172,995.90

January 1, 1944—December 31, 1944

Censorship Fees	$209,030.45		
Substitute Leaders	331.35		
Total Collections			$209,361.80
Distributed as Follows:			
Operation of Division	21,762.62		
To General revenue fund—	93,799.59		
		115,562.21	
Support of visual education Rotary—sec. 871-48 G. C.		93,799.59	
Total Distribution			$209,361.80

January 1, 1945—December 31, 1945

Censorship Fees	$217,591.25		
Substitute Leaders	826.50		
Total Collections			$218,417.75
Distributed as Follows:			
Operation of Division	26,840.93		
To general revenues fund—	95,788.41		
		122,629.34	
Support of visual education Rotary—sec. 871-48 G. C.		95,788.41	
Total Distribution			$218,417.75

January 1, 1946—December 31, 1946

Censorship Fees	$238,267.25		
Substitute Leaders	844.50		
Total Collections			$239,111.75
Distributed as Follows:			
Operation of Division	30,823.45		
To general revenue fund—	104,144.15		
		134,967.60	
Support of visual education Rotary—sec. 871-48 G. C.		104,144.15	
Total Distribution			$239,111.75

[fol. 73]

January 1, 1947—December 31, 1947

Censorship Fees	$244,928.50		
Substitute Leaders	372.75		
Total Collections			$245,301.25
Distributed as Follows:			
Operation of Division	42,284.97		
To general revenue fund—	101,508.64		
		143,792.61	
Support of visual education Rotary—sec. 871-48 G. C.		101,508.64	
Total Distribution			$245,301.25

January 1, 1948—December 31, 1948

Censorship Fees	$284,617.25		
Substitute Leaders	1,806.75		
Total Collections			$286,424.00
Distributed as Follows:			
Operation of Division	45,767.64		
To general revenue fund—	120,328.18		
		166,095.82	
Support of visual education Rotary—sec. 871-48 G. C.		120,328.18	
Total Distribution			$286,424.00

January 1, 1949—June 30, 1949

Censorship Fees	$133,963.25		
Substitute Leaders	384.75		
Total Collections			$134,348.00
Distributed as Follows:			
Operation of Division	8,734.11		
To general revenue fund—	62,806.94		
		71,541.05	
Support of visual education Rotary—sec. 871-48 G. C.		62,806.94	
Total Distribution			$134,348.00

[fol. 74]

July 1, 1949—June 30, 1950

Censorship Fees	$297,131.00		
Substitute Leaders	979.75		
Total Collections			$298,110.75
Distributed as Follows:			
Operation of Division	39,332.55		
To general revenue fund—	129,389.10		
		168,721.65	
Support of visual education Rotary—sec. 871-48 G. C.		129,389.10	
Total Distribution			$298,110.75

July 1, 1950—June 30, 1951

Censorship Fees	$297,412.00		
Substitute Leaders	569.00		
Total Collections			$297,981.00
Distributed as Follows:			
Operation of Division	43,167.13		
To general revenue fund—	127,406.94		
		170,574.07	
Support of visual education Rotary—sec. 871-48 G. C.		127,406.93	
Total Distribution			$297,981.00

July 1, 1951—June 30, 1952

Censorship Fees	$294,490.50		
Substitute Leaders	624.00		
Total Collections			$295,114.50
Distributed as Follows:			
Operation of Division	53,431.16		
To general revenue fund—	120,841.67		
		174,272.83	
Support of visual education Rotary—sec. 871-48 G. C.		120,841.67	
Total Distribution			$295,114.50

[fol. 75] (7) Defendant received a letter dated June 16, 1952, which is marked for purposes of identification as plaintiff's Exhibit C, and which is attached to this stipulation.

(8) The Division of Film Censorship of the Department of Education, State of Ohio, for the period January 1, 1943, to January 1, 1953, has approved 17,741 motion picture films and has rejected 59 motion picture films. Fifteen of the motion picture films rejected have later been approved after revision.

Respectfully submitted, (S.) John C. Harlor, Wright, Harlor, Purpus, Morris & Arnold, Attorneys for Plaintiff. (S.) C. William O'Neill, Attorney General. (S.) Robert E. Leach, Chief Counsel. (S.) Gwynne B. Meyers, Assistant Attorney General, Attorneys for Defendant.

[fol. 76] IN THE SUPREME COURT OF OHIO

CERTIFICATE AS TO RECORD—Filed October 6, 1952

I hereby certify that the following constitutes the official record in this proceeding in the possession of the Division of Film Censorship:

1. Letter of application from Wright, Harlor, Purpus, Morris & Arnold, Attorney's for Superior Films, Inc. for censorship of motion picture entitled "M".

2. Form F-2 "List of Films Submitted for Censorship".

3. Letter from Division of Film Censorship to Wright, Harlor, Purpus, Morris & Arnold, accepting the application and the censorship fee for review of the picture "M".

4. Censors' Slip on picture "M".

5. 3 Forms—Submitted by the three members of the Advisory Board—Reasons for Rejection of picture "M".

6. Certificate of Rejection No. 392.

7. Letter accompanying Certificate No. 392 to Wright, Harlor, Purpus, Morris & Arnold from Division of Film Censorship.

(S.) Clyde Hissong Superintendent of Public Instruction.

[File endorsement omitted.]

[fol. 77] Copy

Wright, Harlor, Purpus, Morris & Arnold

Main 5186

Francis J. Wright
John C. Harlor
Earl F. Morris
Carl J. Purpus
H. Bartley Arnold, Jr.
Howard N. Bullock
C. Emory Glander
Rudolph Janata, Jr.
Howard Crown
Harry Wright, III

Huntington Bank Building, Columbus 15, Ohio

September 11, 1952.

Division of Film Censorship
Department of Education, State of Ohio
State Office Building
Columbus, Ohio

Attention: Miss Susanna Warfield, Secretary

Dear Miss Warfield:

On behalf of Superior Films, Inc., the owner and producer of the motion picture entitled "M", we enclose herewith our check for $30.00 in payment of your required fee, and hereby request that your Division screen the picture, which is in your possession, and approve it for distribution and exhibition in Ohio.

Very truly yours,
Wright, Harlor, Purpus, Morris & Arnold, By J. C. Harlor, Attorneys for Superior Films, Inc.

JCH: lgk
Encl.
CC: Mr. Gwynne Myers
Assistant Attorney General

(Duly verified)
(Seal)

Filed October 6, 1952
Supreme Court of Ohio

[fol. 78]

Copy

State of Ohio
Department of Education
Division of Film Censorship

List of Films Submitted for Censorship

36286
No. 9-12-52
Date

By Superior Films Incorporated
Of 846 North Cahuenga Blvd.,
Hollywood 38, California
Covered By;
Wright, Harlor, Purpus, Morris & Arnold
Check No. 5903.....September 11, 1952.....$30.00 O. K.
EC

Title	Reels In Film	Maker	Prints Required	Total No. Reels
"M"	10		1	10

Duly verified
(Seal)
Filed October 6, 1952
Supreme Court of Ohio

[fol. 79]

Copy

State of Ohio

Department of Education
Columbus

Division of Film Censorship

September 12, 1952.

Wright, Harlor, Purpus, Morris & Arnold,
Attorneys for Superior Films, Inc.
Huntington Bank Building,
Columbus 15, Ohio

Attention: Mr. J. C. Harlor

Dear Mr. Harlor:

Upon the advice of the office of the Attorney General, in his letter to the Director of Education, under date of September 11th, we are accepting the application and the censorship fee for a review of the picture "M".

The staff will review the picture at its earliest convenience probably within ten days.

Very truly yours,
Division of Film Censorship, Susannah M. Warfield,
Supervisor.

SMW/bf
cc Mr. Gwynn Myers
Assistant Attorney General
(Duly verified)
(Seal)

Filed October 6, 1952
Supreme Court of Ohio

[fol. 80] Copy

David Wayne
Howard de Silva
Luther Adler

Date received 9/12/52
Date censored 9/15/52
Date returned ——

Submitted by Superior Films, Inc. 846 North Cahuenga Blvd. Hollywood 38, Calif.

Title M, 392 (Rejected)
Maker, Columbia Pictures presents— Class ——.
No. Times Screened, 1. (Total screenings 4 times—3 for Columbia Pictures).
Censor——, H.E.H., S.M.W., R.H.
10 Reels, 5 Doubles, Screened 9/15/52. Rejected.
Eliminations: Advisory Board present and unanimous for rejection.

The picture "M"* was submitted for censorship by Superior Films, Inc., Hollywood, California on September 12, 1952. The three members of the Advisory Board and the staff reviewed the picture on September 15, 1952. It was the unanimous opinion of the three members of the Advisory

* This picture had previously been submitted to the Ohio Censorship Board by Columbia Pictures, Inc., looked at three times, and rejected April 23, 1951. This screening for Superior Films, Inc., constitutes the fourth time this picture "M" has been reviewed by The Ohio Division of Film Censorship.

Board and of the staff of the Division of Film Censorship that the film be rejected on account of being Harmful.

On the basis of the unanimous decision of the three members of the Advisory Board and the staff of the Division of Film Censorship that the film is not suitable for Public Exhibition the film "M" is rejected for showing in Ohio. Under the authority of Section 154-47 b of the Ohio General Code the film "M" is rejected as harmful in that:

1. There is a conviction that the effect of this picture on unstable persons of any age level could lead to a serious increase in immorality and crime.

2. Presentation of actions and emotions of child killer emphasizing complete perversion without serving any valid educational purpose. Treatment of perversion creates sympathy rather than a constructive plan for dealing with perversion.

3. It is a horror picture of the most revolting kind, since it invades the realm of innocent children.

[fol. 81] 4. It undermines confidence in enforcement of law and government. The plot is composed of a repetition of criminal acts and law violations with mob violence and hysteria and at the same time exhibiting the ineffectiveness of the police.

NOTE: See Rejection Cert. #380—issued to Columbia Pictures Corp.

(Duly verified)
(Seal)

Filed October 6, 1952
Supreme Court of Ohio

[fol. 82] Copy

Motion Picture Censorship

Excerpts:

Ohio Censorship Law: "It shall be the duty of the department of education to examine and censor as herein provided, all motion picture films to be publicly exhibited and displayed in the State of Ohio.

"Only such films as are in the judgment and discretion of the department of education of a moral, educational or amusing and harmless character shall be passed and approved by such department.

Note: Ohio censorship is for *general exhibition;* there is no provision in the law to classify pictures as *Adult.*

Questionnaire—Censorship

Picture viewed: "M".

1. Should it be approved for general exhibition? No.
2. Should it be rejected for general exhibition: Yes.

Reasons:

1. Harmful, undermines confidence in Police, Law and government Mental Institutions.
2. Harmful, credits criminals with control of law and order without adequate punishment being shown.
3. Not educational, treatment of perversion creates sympathy rather than a constructive plan for dealing with perversion.

3. Should it be approved with eliminations for general exhibition? No.

(Duly verified). (Seal).

Name: Lee Malone.

Date: Sept. 15, 1952.

Filed October 6, 1952, Supreme Court of Ohio.

[fol. 83] Copy

Motion Picture Censorship

Excerpts:

Ohio Censorship Law: "It shall be the duty of the department of education to examine and censor as herein provided, all motion picture films to be publicly exhibited and displayed in the State of Ohio.

"Only such films as are in the judgment and discretion of the department of education of a moral, educational or

amusing and harmless character shall be passed and approved by such department.

Note: Ohio censorship is for *general exhibition;* there is no provision in the law to classify pictures as *Adult.*

Questionnaire—Censorship

Picture viewed "M".

1. Should it be approved for general exhibition? No.
2. Should it be rejected for general exhibition? Yes.

Reasons:

1. It creates distrust in law enforcement agencies and presents for approval underworld characters and mob violence.
2. Creates unreasoning dread and fear in the hearts and minds of parents for the safety of children, especially young trusting daughters.
3. Cold-blooded murder enacted by mob leader when the false lawyer summons up a spark of decency in his drunken stupor.
4. I would classify it as a harmful picture of the most revolting kind, since it invades the realm of innocent children.

3. Should it be approved with eliminations for general exhibition? Not at all.

(Duly certified). (Seal).

Name: Fred C. Slager, Member Film Advisory Board.
Date: Sept. 15th, 1952.

Filed October 6, 1952, Supreme Court of Ohio.

[fol. 84] Copy

Motion Picture Censorship

Excerpts:

Ohio Censorship Law: "It shall be the duty of the department of education to examine and censor as herein provided, all motion picture films to be publicly exhibited and displayed in the State of Ohio.

"Only such films as are in the judgment and discretion of the department of education of a moral, educational or amusing and harmless character shall be passed and approved by such department.

Note: Ohio censorship is for general exhibition; there is no provision in the law to classify pictures as *Adult*.

Questionnaire—Censorship

Picture viewed "M".

1. Should it be approved for general exhibition? No.
2. Should it be rejected for general exhibition? Yes.

Reasons:

1. Film is of a serious harmful character.
2. It protrays a desperately deranged character throughout.
3. Its effect on unstable persons of any age level (young child, adolescent or adult) could lead to serious increase in sex murder, and molesting of innocent victims. It destroys confidence in protection of law enforcement bodies, city police. The plot is composed of repitition of criminal acts and law violations and at the same time exhibits ineffectiveness of police.

3. Should it be approved with eliminations for general exhibition? No.

(Duly certified). (Seal.)

Name: Mildred S. Bickel (Mrs. R. C.).
Date: Sept. 15, 1952.
Filed October 6, 1952, Supreme Court of Ohio.

[fol. 85] Copy

State of Ohio

Department of Education
Division of Film Censorship
Columbus

No. 392.

Date: Sept. 16, 1952.

Certificate of Censorship
Rejected

This is to certify that Superior Films, Inc. of 846 N. Cahuenga Blvd., Hollywood 38, Calif. has submitted to the Department of Education for examination and censorship a motion picture film consisting of 10 reels, as shown below, that the censorship fee of $30.00 has been received, and that said film is not of a moral, educational or amusing and harmless character and is therefore not passed or approved by the said Department.

Paid by (Wright, Harlor, Purpus, Morris & Arnold. Check No. 5903) Attorneys for Superior Films, Inc. List No. 36286.

Title: M.

Cause of rejection: On account of being harmful *

* For amplification, see other side.

Feet: 10000.
Fee: 30.00
Manufacturer: Columbia Pictures presents.
Department of Education, Division of Film Censorship. (S.) Clyde Hissong, Superintendent.

(Duly certified). (Seal.)

[fol. 86] * The picture "M" was submitted for censorship by Superior Films, Inc., Hollywood, California on September 12, 1952.

The three members of the Advisory Board and the staff reviewed the picture on September 15, 1952. It was the unanimous opinion of the three members of the Advisory

Board and of the staff of the Division of Film Censorship that the film be rejected on account of being harmful.

On the basis of the unanimous decision of the three members of the Advisory Board and the staff of the Division of Film Censorship that the film is not suitable for public Exhibition the film "M" is rejected for showing in Ohio. Under the authority of Section 154-47b of the Ohio General Code the film "M" is rejected as harmful in that:

1. There is a conviction that the effect of this picture on unstable persons of any age level could lead to a serious increase in immorality and crime.

2. Presentation of actions and emotions of child killer emphasizing complete perversion without serving any valid educational purpose. Treatment of perversion creates sympathy rather than a constructive plan for dealing with perversion.

3. It is a horror picture of the most revolting kind since it invades the realm of innocent children.

4. It undermines confidence in enforcement of law and government. The plot is composed of a repetition of criminal acts and law violations with mob violence and hysteria and at the same time exhibiting ineffectiveness of the police.

This picture had previously been submitted to the Ohio Censorship Board by Columbia Pictures, Inc., looked at three times, and rejected April 23, 1951. This screening for Superior Films, Inc., constitutes the fourth time this picture "M" has been reviewed by the Ohio Division of Film Censorship.

Filed October 6, 1952, Supreme Court of Ohio.

[fol. 87] Copy

STATE OF OHIO
Department of Education
Columbus

Division of Film Censorship

September 17, 1952.

Wright, Harlor, Purpus, Morris & Arnold,
Attorneys for Superior Films, Inc.
Huntington Bank Bldg.,
Columbus 15, Ohio.

Attention: Mr. Harry Wright

DEAR SIR:

Enclosed you will find copies of the Certificates of Rejection as issued on the picture "M".

These include the original, which you requested to be mailed in your care and the requested copy for yourself.

Very truly yours, Division of Film Censorship,
Susannah M. Warfield, Supervisor.

SMW/bf.

(Duly certified.) (Seal.)

Filed October 6, 1952. Supreme Court of Ohio.

[fol. 88] EXHIBIT B TO STIPULATION

Dialogue on "M"
Reel One

Boy: What about Elsie?
Girl: Oh, she can get along O. K. Come on.
Elsie: Excuse me.
Killer: Are you going home?
Newsboy: Extra, extra, all about the baby killer. Extra, extra, get your paper.
Killer: Do you have one maybe with Elsie on it?
Man: No Elsie.

Killer: No Elsie. Well, we'll take a clown for our young lady.

Mrs. Coster: Where's Elsie? Why didn't you wait for her?

Girl: We thought she went home with someone else. We wanted to wait for her, honest we did, Mrs. Coster.

Mrs. Coster: Elsie. Elsie, Elsie, Elsie, Elsie, Elsie, Elsie, Elsie, Elsie, Elsie, Elsie.

Regan: . . . again, in this case, as in the others, the only clue is the missing shoe. I promise you that your police force will find this murderer. To prevent other such crimes, your Police Department has prepared five "Don'ts". Don't let your children accept rides from strangers. Sometimes these are one-way rides, leading to death. The amiable stranger may be a killer. Don't let your children accept presents from strangers. A bag of popcorn or a candy bar is not worth your child's life. Don't send children on after-dark errands. The night works in behalf of the killer who [fol. 89] preys on our young. If you must have something from a store after sundown, get it yourself. Don't let your child play unattended in wooded places or empty lots. Though your eyes aren't on him, someone else's may be watching. Don't let your children become friendly with pop, that nice old character in your neighborhood. Most of these men are harmless, but there are exceptions. It's up to you to make sure your child isn't the victim of one of these exceptions. And now for one all-important "Do." If you notice any suspicious characters lurking around schools or playgrounds, do call at once, your police department, Central five-thousand. The life you save may be your child's life.

Announcer: You have just heard Chief of Police Regan making a direct appeal in this emergency to all parents and those responsible.

Man: What does he mean, the kids were neither violated nor outraged?

Man: What's the difference. He killed them, didn't he?

Policeman: Come on. On the sidewalk. What're you tryin' to do?—get into the papers? There's a crosswalk 15 feet up the street. Ordinance 236. Jaywalkin'. What's your name?

Man: What's you pickin' on me for? A million people jaywalk every day.

Policeman: What's your name?

Man: Harry Dennis.

Policeman: Harry Dennis. Address?

Man: 5422 West 6th Ave.

Policeman: West 6th Ave. Ten o'clock Tuesday.

Man: That's a cop for you! Hands me a ticket while the baby murderer runs around loose. Why don't they do something about *him*?

[fol. 90] Man: My, my, my.

Girl: Thanks, mister.

Man: As long as you didn't hurt yourself . . .

Girl: Ouch!

Man: What's the matter?

Girl: I hurt my ankle.

Man: Oh? That's it.

Woman: Sam. Sam. There's a man up there with the kid.

Man: Hey, you better get home and take care of that ankle. Do you live near here?

Girl: Just around the corner.

Mechanic: What's it to you, Mister, where she lives?

Man: I was only trying to—the child—her foot——

Mechanic: What about her foot? It looks all right to me. (Ad lib.)

Woman: I saw him first. I saw him first. He grabbed the kid and tried to take her shoes off.

Voice: Did you say *shoes*?

Man: Tell them. Tell them I didn't do anything . . . I didn't do anything. I swear I didn't do anything . . .

Regan: I tell you mayor, we're doing everything possible. We may pick up this murderer in the next five minutes and we may never get him. All we can do is follow every lead.

[fol. 91] Mayor: You're not dealing with a punk or a tinhorn. Usual procedure won't work. Catching this man is going to take brains. Imagination.

Regan: Maybe you have some ideas we can use.

Mayor: Ideas? I got a million of em. Not my job to run this department. It's yours. I got a city to run. This is only one department. The people of this city depend on

me for transportation, for hospitals, for sanitation. Not to go out and catch this murderer.

Regan. Yeah? It's Carney. He can bring you up-to-date.

Carney: I'm sorry, Mr. Mayor, I haven't got him yet.

Mayor: Of course you haven't. You know why? Not thinking it through. Take a tip. Use this. Put yourself in Killer's place. What would you do if you were killer. Figure that out, and you've got your man.

Carney: Could be, your honor.

Mayor: Brains. Imagination. Just like I was telling the Chief.

Carney: Meanwhile, though, it's all right if I continue our raids all over town?

Mayor: Sure, sure. Can't do any harm. Put a scare into the punks and the tinhorns. Good for them. Gotta leave now. Ten minutes behind schedule. Gotta open a super market. Now remember, brains, uh, imagination. Spencer, get the airport. I'll be right down.

Carney: Is he gone?

Regan: Yeah. Can't blame him, though. The papers are certainly on our necks.

Carney: The ordinary murder, you look for a dame or a bankbook. You have a victim with known enemies. But what do we have to go on—the missing shoes. What are we looking for? A man with a twisted mind. He could be anybody.

[fol. 92] Girl: I don't wanna go. I don't wanna.

Man: What's going on here?

Man: None of your business.

Man: Not so fast, buddy.

Woman: Maybe he's the one! The Fiend!

Girl: Daddy . . . Daddy . . . take your hands off my daddy.

Man: Alright, let's go. I thought he was the kidnapper.

End of Reel One

[fol. 93] Reel Two A

Boy: Quit shoving.

Boy: I don't know, I don't know, I——

Detective: Homicide . . . Finley . . . Yeah . . .

Girl: I don't remember.

Man: Now, see, this kid comes walking down the street and she's wearing a blue dress . . .

Woman: Mister, you got that wrong. She was wearing a *red* dress.

Man: Look, Lady, I ain't color blind. So this kid in the blue dress comes along . . . .

Woman: It was a *red* dress.

Man: What *are* you—a Communist?

Girl: So as soon as I get in this guy's car I see a little pair of shoes hanging from the dash board, so I just had to run, but not before I got a chance to get his license number.

Detective: Thanks, sister. You got to remember there are ten thousand of those gilded shoes hanging in cars in this town.

Girl: There was something about this guy—the look in his eyes . . . Fresh!

Carney: Go outside.

Becker: I just washed out the last bum we picked up.

Carney: Maybe we ought to widen the field.

Becker: Bums don't sue for false arrest.

Carney: We keep on picking up bums and the guy we're looking for could be a professor, or storekeeper—maybe even a cop. We look for him in honky-tonks and he could be on a golf course.

[fol. 94] Carney: Here's a new bunch to check on. The asylums are finally sending in lists of men they've released who might be involved in this kind of killing.

Becker: Laws. Files. Reports. I'd trade them all for one good stool pigeon.

Carney: Maybe you'll find your stool pigeon at tonight's shakeout. Carney speaking—Yes . . . . yes . . . Where? —the shoes again? . . . Another one. Another one.

Mrs. Stewart: I can't believe it. I can't believe it. Not my baby.

Stewart: We read about those other children in the papers—but *our* baby . . .

Regan: It can be anyone's child. Anyone's nobody is safe.

Mrs. S.: She was such a beautiful baby. Her hair was . . . so long . . . like silk when you touched it.

Regan: If we need you, we'll get in touch with you.

Stewart: Thank you.

Mrs. S: Maybe it's a mistake. Maybe it's somebody else's . . .

Regan: Now we're really in for it. A councilman's grandchild. I tell you, we've got to find that killer!

Carney: Maybe tonight, Chief—maybe on- of the raids——

Regan: Do you really think? . . .

Carney: No.

Voice: We regret interrupting this program but our time is up. Be with us again tomorrow night for an hour of classical music. And now for a message from——

Girl: But the thrill of my life when I saw the second matinee.

[fol. 95] Prisoners: I wanna lawyer: Whaddays want with me? I didn't do nothin'. What's the beef? Why don't they lay off us and find this baby killer? Yeah. How about that baby killer?

Becker: Alright, shut up! We'll shut them up.

Carney: Take it easy. Quiet! Quiet! So you want us to find the baby killer, do you? Well—this shakedown is to find him. We figure he might be one of you. Anybody lose anything? I'm going to ask some questions and I want straight answers. I'll take you one at a time. You . . . first.

Girl: Mary Larkin—Please . . . my mother . . .

Becker: They're all orphans till you pick them up. I'll bet she's got an arrest record long as my arm.

Carney: Is he right?

Girl: No. Honest. It's the first time I ever . . . please let me go.

Carney: Get out of here and don't let me ever see you again.

Becker: Five'll get you six you will.

Carney: Next—name?

Greer: Greer. Harry Greer. I'm a salesman, Chief. Just happened to be in the neighborhood.

Carney: Yeah? How's business?

Greer: Could be better. Things are bad all over.

Carney: Haven't seen a paper all day.

Carney: Two across, Blue Top, Fifth at Tanforan. Five dollars to win, Rajah, sixth at Churchhill. Better stick

around, Greer, till we get a later edition with the final results.

[fol. 96] Becker: What're you doing down this way?

Man: Slumming.

Becker: Next.

Becker: That guy—wasn't he——?

Carney: Langley. Merle Langley. What a lawyer he used to be. But—Who's next?—Name?

Girl: Mable Smith . . .

Marshall: Boys—I asked you here to catch you up to date on my thinking about these baby killings.

Riggert: Very smart—you're a very smart man, boss. I had this figured.

Marshall: Thanks. I always welcome your opinion, Riggert, but—just why did you think I'm smart? And what was it you have figured?

Riggert: Well—you rigged the killings, didn't you, boss? —to take the heat off us from the Grand Jury? Didn't you, boss? I thought it was a good idea. The heat's off us, ain't it? We're off the front pages, ain't we? The Grand Jury's investigating the cops instead of us, ain't they? Ain't they?

Marshall: You know—I'm glad I'm smarter than you think I am, Riggert . . .

End of Reel Two A

Reel Two B

Langley: Sorry, I'm late, Charlie. I—I stopped in at Nick's for one drink. It's veritably crawling with coppers.

Charlie: I'll take that.

Langley: Thank you, Charlie. I need a shot.

[fol. 97] Marshall: I'm glad you're here to defend me, Dan. Riggert's just said that I'm the baby-killer.

Riggert: Oh, I didn't mean you personally, boss, but I thought——

Marshall: Make me a case, Counselor. I'll need that glass . . . make me a case.

Langley: Gentlemen of the jury, I'll be brief. I know we are all anxious to get away. I have a very important case waiting—a case of scotch . . . But believe me, gentlemen, this is the most important case since I went to the—

bar—The man here, has been my client for years. He was a good boy—good to his mother . . . Gentlemen—you have the faces of honest men and good judges of character. Look at my client! You can judge for yourselves whether he would be capable of these heinous crimes by simply asking yourselves whether you—you for instance would be capable of killing an innocent baby!

Pottsy: Careful, Langley—there's some things I don't like!

Marshall: Exactly! You see, Riggert? The thought of these murders turns even Pottsy's stomach. Imagine the feelings of the general public. Your average citizen isn't too concerned whether the police catch us or not—unless the press stirs them up for political reasons—because in one way or another we service almost the entire community. But when it comes to catching a baby-killer—they want action from their police department.

Riggert: That's what I said. They're on the spot.

Marshall: So what do they do? The Counselor here, has told us what happened at Nick's. How's you're floating crap game, Sutro?

Sutro: Just floating. Keeping its head above water, but that's about all. A few of the boys got tabbed so they've been laying low and——

[fol. 98] Marshall: That's what I thought. McMahan?

McMahan: Same—or worse. Yeah, can't even show your face around the high-schools the way things are—

Marshall: Pottsy?

Pottsy: Where the cops get the idea that baby-killers play slot-machines——

Riggert: Well, sure, boss—same as us. They been tapping a lot of our little bookies, cigar-store, barber-shop front stuff, only—

Marshall: Riggert—excuse me, counselor, who do you think that means?

Riggert: People that live in glass houses shouldn't throw stones... I don't know, boss.

Marshall: We're in a business with a take of millions—from Pottsy's slot machines to your wire service. These are the runners, the pickup men. They collect the first money. These are the drops. The district offices. This

is—the center, you boys. And this is me. We're on the top there. Riggert—you think everything is lovely because we're not in front of the Grand Jury, and your face isn't on the front pages—

Riggert: Sure . . .

Marshall: Yes. Sure. But—now look what happens on the top there when the bottom is knocked out . . . Now, do you understand, Clean up the mess, counselor?

McMahon: So—what—boss?

Marshall: The police department answers public pressure by raiding us. Raids, raids, and more raids. They're on the spot—and to protect ourselves we got to take them off the spot.

Sutro: Where do we get off helping the cops? Whoever heard of something like that?

[fol. 99] Marshall: I'll admit it's a situation we could never have anticipated—

Langley: "Force Majeur."

Marshall: "Force Majeur." Thank you, Counselor. An act of God, Sutro. But it can't go on. As long as this man is running loose we can't operate.

Riggert: Who do we frame?

Marshall: No frame, Riggert. This killer wouldn't stop because they made an arrest. We have to find him and stop him, ourselves.

Sutro: We ain't going to help the cops—we're going to *be* cops!

Marshall: We've got the organization to keep an eye on every child in this city. Our runners and pick-up men are on the streets at all times. We've got drops in candy stores, barber shops, newsstands, shoe-shine parlors. We even—got our own radio system. Our cabs—the Ajax outfit. With their two-way system, they cover this town.

Pottsy: The way I see it, my boys will be dishing the third degree for a change: *They're* going to like *that!*

Sutro: What an operation *this* is going to be.

Marshall: That's right. A major operation. Operation "M".

Pottsy: "M"—I don't get it.

Sutro: "M" for Murderer, dope.

Marshall: Alright. Now you know what to do. Here's one for you—One for you. You. You. Keep your eyes

open when you're out there in the street. Particularly in the alleys.

(Ad Libs) Come on, let's go. Let 'em go. Let 'em go.

Driver: 93 Park.

(Ad Libs).

[fol. 100] Marshall: I'm depending on each of you boys in this case to watch his own territory.

Pottsy: I'm depending on each of you boys and your gang to watch his own territory. No chiseling—and no arguments. You can start fighting again *after* we find this guy. Get me?

Men: (ad libs) Yeah, sure. . Okay, boss. Yeah, sure. We can get together on this—Anything you say . . . .

Pottsy: Remember, the minute you make this guy, call my number. Any Ajax driver will give you a hand. Meanwhile, this ought to take care of expenses.

Driver: Ajax calling. False alarm. Everything okay.

End of Reel Two B

Reel Three A

Becker: We picked up the bunch from the Elysian Hospital report. They're in Graham's office now.

Carney: Good.

Becker: So he'll play games with them, rub their heads and turn them loose. How's he going to find out anything that way?

Carney: You got a *better* way?

Becker: Yeah. A dark room, a rubber hose, and about a half dozen cops.

Carney: The Courts don't like it that way.

Becker: Well, that's just the trouble. We need less courts and more cops. Well, I got some more looneys to check on. If they're psychos, how come the hospitals turned them loose, in the first place?

[fol. 101] Carney: It's the law, they're "cured".

Becker: Oh, they're cured? A fat chance a cop has to make a pinch stick. Laws . . . courts . . . skull-tappers.

Graham: Head.

Suspect: Foot.

Graham: Green.

Suspect: Red.
Graham: Sing.
Suspect: Song.
Graham: Shoes.
Suspect: Stockings.
Graham: Water.
Suspect: Land.
Graham: String.
Suspect: Choke.

Graham: Tell me what you see or what it could be or what you imagine it to be.

Suspect: I see two teddy bears, a Christmas tree in the corner, a man with a bandage on his head and flames rising in the air.

Suspect: A cannon. A girl with her hand in the air. A flag in the middle there . . .

Suspect: A bunch of twisting snakes . . . Flames shooting up from the ground and a sword . . . sword . . . a horse with hoofs in the air.

Graham: Alright, thank you.

Carney: Any leads in that bunch?

Graham: Just the one. The fellow who answered "choke" to "string". It probably won't mean anything.

Reporter: What are you looking for? What kind of a man?

[fol. 102] Graham: A paranoid. Possibly a paranoid skitsofrenick probably. Maybe a borderline case, but in any event, a very sick man. Frequently this form of mental disease can be traced back to the patient's childhood—to some severe emotional injury he received.

Reporter: You mean the men psychos call—ting-a-lings?

Graham: Well, in picturesque lay language, possibly yes—but this need not necessarily affect his ability to reason correctly, although he lives in a world all his own.

Reporter: What about the missing shoes? What do they mean?

Graham: Well, for Carney they provide a clue to find the man. I have to find the man before I can get a clue to the missing shoes. But then, that, too, might have in some childhood injury or serious neglect. Something happened then that made shoes a detonator that sets him off.

Carney: Alright, come on. Thanks doctor. So long, doc.

Landlady: If it's about the room, it's eight dollars a week. In advance.

Becker: I'm from the Health Department. Does a man named Harrow live here?

Landlady: What's he done?

Becker: Nothing. He was in the hospital sometime ago and——

Landlady: That's right. Talks about his headaches lots.

Becker: That's what I want to se him about. To find out if he'd like to go back to the hospital for treatment.

Landlady: Mr. Harrow ain't in.

Becker: Do you mind if I wait for him?

[fol. 103] Landlady: Guess it's all right. Oh that's my boiling water. It's just down the hall, second door to the left.

Girl: Mommie! Mommie!

Mother: Hello honey. I said you should wait for me at home.

Killer: Coffee. Waiter, waiter. Whiskey.

Waiter: Burbon or rye?

Killer: I don't know. Any kind. Oh, oh, oh, oh. (Cries.)

End of Reel Three A.

Reel Three B

Becker: Cole died in the State Hospital seven months ago. Harrow wasn't in. Conducted search of his room—nothing suspicious. Just the same, I may have him picked up late, anyway. Hobbs living with his family, has a perfect alibi . . .

Carney: Okay, okay—that's enough. Dead ones. Missing ones. Men with alibis . . . Maybe nobody committed these murders. Oh, everything's got to happen to me.

Becker: Maybe I'm nuts . . .

Carney: Maybe . . . Maybe . . . Let's go to work.

Becker: Nothing. Nothing at all. Just the same . . .

Carney: Just the same—there's something. Might as well get that stuff back in the closet. Well, it looks like this is it.

Jimmy: What's up? What's the beef?

Blind Man: That music! You hear that music?

Jimmy: Yeah. Sure. A tin whistle. So what? Just some guy and a kid.

[fol. 104] Blind Man: It's him. It's *Him*. The murderer. I heard that song before. He's the man who bought the balloon the day that Elsie Coster was murdered.

Killer: I'll show you a trick.

Girl: Flowers?

Killer: Yes.

Jimmy: Hey, got a match? If you don't have a match, how about giving your old buddy a beer?

Killer: No!

Jimmy: Just buy me a little drink. That's all.

Killer: No!

Jimmy: What's the matter? Got no little beer, no drink? No nothing.

Killer: The guy's drunk.

Girl: You dropped the knife.

Killer: No. Never mind.

Girl: Look at the deer. Is it alive?

Killer: Hey, you want some flowers?

Girl: Yeah. I want some ice cream. Can I have some ice cream?

Killer: What kind do you want?

Girl: Strawberry. Hey, mister, you got something on your back. I'll brush it off for you.

Child: I want some ice cream.

Killer: Later. Later. It's a game. They're chasing us. We gotta hurry!

Officer: Hey, you——! Come here. Hey, what's cookin'? Who you tailing?

[fol. 105] Brownie: It's my side-kick. His chick's two-timin' him and we're doing a little checking.

Officer: Oh, I think *I'll* do some checkin' myself. Hey, you. Come here.

Pottsy: Charlie, they found him. They spotted him. Stay with him. There's a C note for you if it's the right man. I knew they'd find him. The kid even branded him. Plastered an M on his back.

Sutro: Suppose he gets away?

Marshall: No he won't. That's the value of organization if you know how to run it. Call Ajax. I'm gonna have

the dispatcher notify the drivers to pass the word around. Quick!

MacMahon: It's in the bag.

Langley: Doesn't this call for a celebration?

Marshall: Don't mind us, Counselor. Drink yours stright from the bottle.

Carney: Becker's staked out in Harrow's room. There's a general alarm out. Plain-clothesmen are blanketing the district. Uniformed division's making every downtown saloon. We'll pick him up. Don't worry.

Regan: We better. The Mayor's on his way down here.

Carney: His statement ought to make the morning papers; We'll pick him up. But then what? Back to the booby hatch? A man like Harrow should never have been released in the first place. So understaffed they have to free dangerous men——

Regan: He won't get out this time. He'll burn.

Carney: That's right. That's right. And that'll fix everything.

Killer: No, you mustn't. We're still playing our game.

Girl: I'm tired.

[fol. 106] Killer: No, no.

Bootblack: Stop him. Wait, hey, stop him. He came through here. The baby killer!

Lady: Where you been hearing this kind of gossip?

Man: Well, have a good time.

Lady: Have a good time fishing Tom.

Man: Thank you.

Rocky: Hey, Pop!

Rocky: Pop! Did you see a guy run in here?

Watchman: No, no . . . beat it, boys. No one came in here.

Rocky: Hey, Pop! Look!

Watchman: All right, now boys. Get! Get!

Rocky: No kiddin', Pop—he's a dangerous character!

Watchman: Yeah, yeah, it's the baby killer.

Rocky: Yeah, yeah, you're so smart. That's who it is.

Watchman: Beat it. Beat it.

Jimmy: You stay here.

Brownie: Right.

Jimmy: And you guys go get Doug and the boys. Come on.

Rocky: Yeah, that's the one . . . the building on Third Street.

Marshall: Keep the place covered. Somebody'll be around in a few minutes to give you a hand. That's all.

Sutro: What a break. He's inside and we're out. What do we do now? Call the cops?

Marshall: We're going after him.

Sutro: Yeah, Sure. And tomorrow we crack Fort Knox.

Riggert: Maybe Sutro's right, boss. Maybe we ought to tip off the cops and let them drag this guy out.

[fol. 107] Marshall: I said we were going after him. Mac.

MacMahon: Yeah?

Marshall: Get down to Third Street. Call me when you know the score. Pottsy, line up your muscle men and some boys who can crack a crib. Have them bring their kits . . . Well, what are you waiting for? Get going!

End of Reel Three B.

Reel Four A

Watchman: Hey, anybody inside? Hey, Hey, anybody inside? I'm locking up.

Officer: Did you know your gate's unlocked?

Watchman: What! I was sure that—maybe those kids——

Sutro: Open up—quick!

Pottsy: You don't want to get hurt; all you got to do is answer a couple of questions. Now, how many watchmen in the building? *How many?*

Watchman: Just me and the engineer.

Watchman: So help me, it's the truth! Only one watchman, me—and the engineer. We're the only ones in the building.

Pottsy: Okay, boys. We start with the cellar and end with the roof. Riggert, take a couple of boys and pick up the engineer. Sutro, MacMahon, take him upstairs.

Detective: Any chance he got scared off?

Becker: No one could get to him—got a tap on the phone and the joint's closed tight . . .

Langley: Yeah? Oh—that's bad . . . They haven't found him yet——

[fol. 108] Marshall: Who's talking? Tell MacMahon that Marshall will be right down. Stay here and watch the

phone, and for once, stay sober! The only way to do a thing right is to do it yourself. What have you done about the alarm boxes? They have to be punched every hour. MacMahon, take care of that. They're on every other floor. Get moving. Right there. Now . . . what's been covered so far?

Pottsy: The basement and the first three floors.

Marshall: We haven't got all night. Sutro, break down doors. Go into every store. Check closets, offices, galleries, everything. Now go on, get moving. Anybody searched that?

Sutro: How could he be in *there*?

Marshall: Lemke, get it open. Not that way, idiot. Don't you see it's wired? Drill it from above.

Man: OK.

Marshall: The rest of you get going. Half a floor apiece.

Radio Voice: Attention all units. Following is description of suspect wanted for murder. Martin W. Harrow. Use caution. The suspect is a probable mental case. Male Caucasian, 30-35 years, 5 feet 7 inches. 150 pounds. He has light hair and blue eyes, wearing a dark suit and tie and a grey felt hat. Was last seen at his rooming house at 1302 River Street, at approximately 10:30 AM.

Carney: Is Becker back yet?

Voice: He's on his way back, sir.

Voice: 3568——

Girl: I wanta go home.

Killer: I'm sorry.

End of Reel Four A.

[fol. 109] Reel Four B

Radio: Repeating. Repeating for all cars. General alarm for Martin W. Harrow. Wanted for murder. Male Caucasian, five feet — inches . . .

Girl: I'm afraid!

McMahon: I've found him. I've found him. He's on the top floor, I heard him.

Marshall: Mike, find out where she lives and take her home. But be careful. They'll be watching. Boys, go get

him. Clean out the place, everything. Come on. What's wrong?

Man: The watchman got loose.

Marshall: Everybody out, Everybody out.

(Ad libs.)

Man: Come on, chief, hurry.

Girl: Where are you taking me?

Lemke: Hey, there's no one down here. Somebody give me a hand. Oh oh.

Officer: Come on. Get up from there.

Voice: 11A325-23rd Street . . .

Shine: I know you got troubles of your own, but I need help.

Carney: Troubles! We had him—just like this. And he got away. I can't figure it.

Shine: Nothing makes sense tonight. Look at this.

Becker: What's it all about?

Shine: A gang went through the Bradbury Building with a vacuum cleaner. Busted down doors, broke into the jeweler's. Smashed into every closet—and they didn't take a thing! But the engineer says he saw a man being dragged away.

[fol. 110] Becker: Since when do hoodlums go in for dry runs?

Carney: I see you picked up Lemke and another man. This Lemke has a record a foot long, but this other guy—this Jansen, he's a bookmaker. Where does *he* figure in a deal like this?

Shine: I wish I knew.

Carney: What do you think *I* can do?

Shine: Well, they won't talk. They know all I got on them is a breaking-and-entering rap. I figure if maybe I brought them in here—you know—the Homicide Squad—it might give them a scare. Tell them a watchman died, or something.

Carney: I'll give it a try. It can't hurt.

Becker: You know, the way I feel, give me ten minutes alone with them and they'd rat on their mothers. Nuts!

Carney: Two mugs like you. A butter-fingered crib-cracker and a fifty-cent bookie. Mixed up in a murder.

Jansen: Murder? I was sleepin'.

Carney: Don't stop him, Lemke. If you talk now, the judge might make it easier.

Lemke: I don't know nuttin'.

Man: Not this time, Lemke. Keep moving. This time it's homicide.

Lemke: Homicide? What am I doing in homicide?

Man: This is it.

Voice: 352 in Walker, in 352 in Walker. 121 clear.

Carney: Two mugs like you. A butter-fingered crib-cracker and a fifty-cent bookie. Mixed up in a murder.

[fol. 111] Jansen: Murder? I was sleepin'.

Carney: Don't stop him, Lemke. If you talk now, the judge might make it easier.

Lemke: I don't know nuttin'.

Carney: *You* hit the watchman over the head, and cracked his skull! *You* sent him to the morgue!

Lemke: Morgue? Me? Why, I never saw the guy before.

Voice: 52381 East . . .

Lemke: I don't know nuttin'.

Carney: And you don't know nuttin' either, eh?

Jansen: No!

Carney: You sure stepped out of your class, Jansen. Ten years for breaking and entering. Twenty years for kidnapping. The chair for murder—You did say they kidnapped a man, didn't you?

Lemke: Hey, you hear that? You hear that? They got the guy!

Carney: Sure they got the guy. That's why they broke into the building for, wasn't it? That's why, wasn't it?

Jansen: That's right. That's why. We didn't go in there to heist the place. All we wanted was him.

Lemke: Oh, shut up!

Carney: Sure, sure, Jansen. Shut up. Twenty years. Thirty years. You don't care. All the time you're in, you can be glad you kept your mouth shut.

Jansen: Well, I ain't doin' twenty years for nobody. Not even for Charlie Marshall. I'll tell you who they were after . . . It was the Baby Killer . . .

[fol. 112] Lemke: Why you no good . . .

End of Reel Four B.

Reel Five A

Marshall: The baby-killer, John. The baby-killer . . . No, I'm serious. I called you because—let's be realistic, John, we're not too far apart in our thinking about the police department. I've enjoyed the series that you ran. We want you to have an exclusive story . . . Pictures by all means . . . , pictures by all means . . . No John. Naturally we expect you to remember this . . . we want a break when the Grand Jury starts on us again after this is over . . . we want you to remind the public who caught the baby-killer . . . see what I mean? Fine. I'll tell you what you do. If you'll send your best reporter maybe that fellow who . . . that's the guy. Have him on the northeast corner of Seventh and Broad, in half an hour. He'll be picked up by a gray Cadillac sedan . . . Thanks, John . . . Thanks very much. Sutro, MacMahon, go pick him up. Riggert, get me my coat.

Pottsy: Where'd you work—the building or out on the streets—or where? What'd you do?

Man: Kept one entrance.

Pottsy. That's worth a sawbuck.

Man: What're you gonna do with him?

Pottsy: What's it to you? You got your dough, now beat it.

Pottsy: This ain't no peep show. You been paid off. Now scram! You guys want a hole in the head? I told you scram. Now . . . scram!

Killer: Who—who are they? What do they want?

Blind Man: Do you remember this? The balloon you bought Elsie Coster?

[fol. 113] (Crowd Voices:) Baby face—baby face killer. No more Nennie, no Ruth. Lynch him. Lynch the rat. Give him the rope!

Marshall: Get away from that man! Get back! All of you! Now clear out of here. All of you, before you bring every cop in town down on us. You did a great job. You collected for it. Leave the rest to me.

Woman: Our men helped catch him. We want to know what you're going to do with him.

Marshall: What's she doing here?

Pottsy: Go on home. This ain't no place for a dame.

Woman: I got kids of my own. I want to know what you're going to do with that man!

Man: He's no man. He's a rat. Let's string the rat up.

(Mob Voices:) String the rat up. Lynch him. Break his dirty neck. Lynch the rat. Lynch the rat.

Marshall: You stupid crums—if you got any brains—use them! The cops are on a spot about this worm. If we kill him before they get him . . . well, you know what will happen. I'm going to turn him over to the cops in my own way so they can kill him and so they'll have us to thank for it. See?

(Mob Voices:) Sure, the cops'll give us medals for this. They'll collect our bets for us.

Riggert: If that guy's dead when the press gets here—it could mean a murder rap, couldn't it, boss?

Langley: Lynching's murder—wrong, wrong . . .

Marshall: That's right. Make me a case, Counselor—tell them to break it up. Read them the riot act. Wait a minute. Listen. The Counselor's got something to say.

(Shouts:) Shut up! Sit down, you lush!

[fol. 114] Riggert: You're 'way out on a limb, boss. *You* called that newspaper guy personally—and that maybe was a mistake. That means you're personally responsible. I guess they'd be happy to pin a murder rap on you personally, wouldn't they, boss?

Marshall: Your coat's getting in your way, Counselor. Now start talking! Don't try to get rid of them, just talk and keep talking till the press gets here. Make me a case, a good one, you know, habeas corpus delicti, you know . . . then you can have a drink. All right, all right. How many times have you all yelled for a mouthpiece to spring you—*not* shutup!

Langley: It's a matter of habeas corpus and subjiciendum—We must establish the substantial facts in the body of the crime as the result of a criminal agency! We must have due process, courts of law, evidence—all the evidence. Can you state under oath that my client is the man who committed these grievous acts?

Voices: He's the one! What did the blind man say?

Langley: If you will give me a moment with my client.

Marshall: Every man's got a right to see his lawyer!

Voice: We've gotta get rid of that guy. He's got to disappear in the river. He don't deserve a lawyer. Some guys haven't got a right to a lawyer.

Langley: What've you got to say for yourself?

Killer: Who are these people?

Langley: Thieves, cut-throats, racketeers, a jury of your peers . . .

Killer: I knew I'd be caught. I knew I'd have to be punished and I want to be, but I thought it would be the police . . .

Langley: Then why'd you run away?

[fol. 115] Killer: I was afraid. You're always afraid to face it when the time comes, even if you know . . .

Langley: You want to plead guilty, claim extenuating circumstances . . .

Killer: No, I'm not guilty. Not the way you think. And I've thought about it a lot. Maybe too much. Can you understand that? You seem to be a man who worries about things, too. You drink too much, don't you?

Langley: Yes. Maybe—you better talk for yourself. I'm in no shape.

Voices: Come on, come on. Quit stalling. We ain't got all day.

Langley: Ladies and gentlemen of the jury . . . I have asked my client to tell you his story in his own words . . . I got to have a drink!

Voices: Sit down. Shut up. Shut him up for good.

Marshall: Let him talk! Every man's entitled to his day in court. You don't get a drink till it's over.

End of Reel Five A

Reel Five B.

Killer: —I knew I'd be caught. That's what I wanted—my day in court—I'd thought of a law court but this will have to do. You see, I've discovered something very important—very important for everybody to know . . . I haven't got it all figured out yet, I can't fit all the pieces together. But it's too important. People gotta listen and—My mother always told me—but it took me awhile to understand—that men are born evil—and cruel and awful—I don't mean all people—just *men* are born low and that's the

hardest thing for a man to fight against . . . the hardest thing there is for a man—it has to hurt, you have to be [fol. 116] punished in order to be good, you have to be whipped, tortured, crucified in order to understand. She was a good woman. And beautiful—her hands—so gentle—crossed at her breast . . . Why should she suffer? Why should she of all women when—You see—that's what I never understood. This is important—this part—when I stole the blanket for her, she knew I was trying to be good, but she made me take the blanket back to the sheriff. It was only at the County Farm I really understood. I found a bird—I always liked birds. It had a broken wing and I nursed it. Then—when it was almost well and wanted to fly away I thought about escaping and then I remembered it was a world of men she'd fly into—ugly and cruel—too ugly and cruel for birds and children! And I knew I had to kill the bird. I had to kill the bird so I'd be punished and kept on the farm. Now do you see?

Woman: So you kill our kids—is that why? Lynch the——

Killer: It's been cold this winter too, while I was looking for work . . . there's many things I could do. If I could only get this figured out. It's so important—for all of you, especially . . . If they don't hang me by the neck . . . I may have time to figure it out at the county farm . . . County farm? . . . Hanged by the neck until—my father should have been hanged for the things he did!—she said so! When I think of those—filthy, vile, horrible things—I have to do them so I can be punished. I have to do them, you understand, I have to, I must, I can't help myself! I can't help myself! I can't help myself!

Marshall: Talk, Counselor.

Langley: A drink.

Marshall: No!

[fol. 117] Langley: I crave your indulgence, ladies and gentlemen of the jury. I have an important case waiting. I'm as anxious to have done with this as you. I have a very important case waiting. A case of Scotch. Now by his own words, my client was a good boy and good to his mother.

Woman: Mother! You've never had a kid! Do you know how it feels to have it taken away from you! If you want to know, ask me—I'll tell you—ask the mothers of the kids he killed! Waiting, waiting to hear . . . then after they

heard . . . What else is there in this life except our kids—what's to look forward to but they grow up better than us?

Langley: Will killing him give children any better chance to grow up different than you, or him, or me?

Marshall: You tell 'em, Counselor.

Langley: My client wanted to be good. Did you want any different? My client . . .

Voices: He killed the kids. Kill him. Get him—lynch him.

Langley: My client is a man who——

Voices: He's no man—he's a monster. He's scum.

Langley: Listen! Yes—no—he's no man, no will, no reason, no sight—blind, blind, stumbling in a world in which he couldn't see his way in. Do you lynch a blind man because he can't see? Do you kill a man like this—or imprison him—or do you put him in an institution? Have we as good an excuse? What of our own guilt? What of the pennies and nickels and dimes stolen from the poor—children's lunch money that goes into our slot machines! Workmen's rent that's bet on horses! How many children have gone hungry and without shoes because of us?

Marshall: Don't be a philosopher, Langley. I don't like that talk, Langley! Be funny. Make 'em laugh. Make it funny.

[fol. 118] Langley: My client—my client is a drunkard . . . He wanted to be a lawyer, to defend the innocent and punish the guilty.

Marshall: Make 'em laugh, Langley!

Langley: Who offered him his first bribe?

Marshall: I'm telling you, watch the talk!

Langley: Who'd broken his faith and his will to refuse?

Marshall: Either talk my way or shut up!

Langley: Who offered him a drink to forget what he did?

Marshall: All right, forget it. You're no use as a lawyer—you're a clown. A drunken clown! Make 'em laugh! Make 'em laugh!

Langley: My client was a child once with many hopes for the future . . . I can't help thinking . . . Where are the killers?

Marshall: You can't think. I bought your brains and used 'em.

Langley: Who kills our children's hopes?

Killer: I killed them. I killed them. I told you I killed them. Do you have to remind me? I murdered. I crushed them like the birds in my hand. I led them into the valley of death holding my hand. My hand. The hand that took them and—Punish me! I want to be punished!

Langley: He wants to be punished——

Killer: Kill me and get it over with. I can't live, I can't live with the things in my mind.

Marshall: Langley!

Langley: Get it over. Why Not?

Marshall: Pottsy!

[fols. 119-120] Langley: Life's too much for him—it's too much for us. Trouble is, we're not blind—we look at them and we see ourselves. He can't figure it out, we can't figure it out. He's found his way out—he wants to be punished.

Marshall: Pottsy! Riggert—stop him!

Riggert: Could be a murder rap, after all, boss, couldn't it, boss?

Killer: He was a good man. He's been punished now . . . now it's my turn . . . No! No, you've got the wrong man! No, no, no! Wrong! Wrong. Wrong. Wrong. Wrong.

PRINTED IN THE USA.

[fol. 121] EXHIBIT C TO STIPULATION

Wright, Harlor, Purpus, Morris & Arnold
Huntington Bank Building
Columbus 15, Ohio

June 16, 1952

Miss Susanna Warfield
Division of Film Censorship
Department of Education
State Office Building
South Front Street
Columbus 15, Ohio

DEAR MISS WARFIELD:

This is to acknowledge your request that the affirmative purposes of the film, "M", be outlined to you.

We believe that "M" successfully challenges five important social problems and either points the way to a possible

solution or dramatizes the problem so that those who have seen "M" will more readily respond to efforts at a solution in their community.

The first problem, to which a solution is posed, is the risk of abduction, murder and mistreatment of children at the hands of people bent upon or compelled to commit mischief. "M" urges five rules of conduct that should be enforced and observed by parents. If followed, the problem would be insignificant.

The second problem, to which a solution is posed and shown in practice, is the burden that is upon a police force, which must act with limited personnel, within certain lawful limits upon method, and on the assumption that every man is innocent until proven guilty, when faced with crimes committed by people who are not within the scope of the conventional criminal mind. The exhaustive, implacable, systematic, patient efforts of checking, sifting and running down leads necessary to a solution is shown dramatically contrasted to the shot-gun approach by a far-flung organization unconstrained by law and the protection which every individual is accorded by the law. Public understandings of law-enforcement methodology is important. "M" seeks to show the how and the why.

The third problem, to which a solution is posed, is the danger and the cost to society of inadequate diagnosis, treatment and care of the mentally ill. The typical case of the unobtrusive almost pleasant person who has only periodic seizures, and who at one time was remediable, is shown. Only better understanding by the public and adequate facilities and staff to care for these people can solve this problem.

The fourth problem, which can only be dramatized with the hope that a moved public will look for a solution, looks to the greatest single cause of mental instability, i. e., the [fol. 122] broken home and the child thereof. "M" seeks to show that the man who, throughout the story, has repelled and horrified, is deserving of a measure of compassion because the source of the illness of mind was the insecurity and hate in the childhood home. He is shown to be a driven man rather than a depraved man. The seeds planted in the mind of the child here are described, as is the gradual

growth. The evil result and the peculiarly difficult problem it presents is shown. Only the social and law-enforcement agencies know how true the general pattern of this story is.

The final problem which is squarely dramatized, with the hope that people will be stirred, is the apathy, inertia and, in fact, tolerance by the people concerning the petty criminal. "M" effectively shows the power and arrogance of the criminal syndicate. It clearly shows that the cohesive force binding every element together is money. Above all it shows that neither the evil power nor the money can exist without the broad base of the little guy. The petty crook about whom the public will not be concerned is shown to be the real tap root of syndicated crime. It is unnecessary to point out that syndicated crime is not a figment of the imagination of the script writer.

With these affirmative and desirable purposes in mind, it is hoped that you and your associates will conclude that this film is a desirable subject of distribution.

Very truly yours, (S.) Harry Wright, III.

HW/mls.

[fol. 123] The Supreme Court of Ohio, January Term, 1952

No. 33265

Attorneys: Wright, Harlor, Purpus, Morris & Arnold, 17 S. High Street, Columbus, Ohio. C. Wm. O'Neill, G. B. Myers, Columbus, Ohio.

Title of Case: Superior Films, Inc. v. Department of Education of the State of Ohio, Division of Film Censorship, Clyde Hissong, Superintendent.

Action: Petition to Vacate Order.

Fees and Costs: Docket Fee $20.00. Docket Fee $2.00. Deposit for Costs $10.00.

Paid by: Wright, Harlor, Purpus, Morris & Arnold, Atty. Gen. —— ——.

Docket Entries

Memoranda of Pleadings, &c., Filed, Writs Issued, &c.

Sept. 25, 1952. Petition to vacate order, waiver of summons & entry of appearance filed.

Sep. 25, 1952. Notice of Appeal filed.

Oct. 6, 1952. Transcript of Record filed.

Oct. 6, 1952. Answer of Defendant filed.

Nov. 17, 1952. Application for Leave to Amend Petition filed.

Nov. 18, 1952. Amended Petition filed.

Dec. 8, 1952. Motion by Defendant to Dismiss Amended Petition.

Dec. 8, 1952. Brief in support of motion and proof of service filed.

Dec. 15, 1952. Answer of Defendant refiled to Amended Petition.

Dec. 15, 1952. Precipe for dismissal of motion to dismiss amended petition filed. 12/15/52 proof of service filed.

[fol. 124] Jan. 12, 1953. Stipulation of Counsel and Exhibits filed.

Jan. 16, 1953. Printed brief of Plaintiff filed, and proof of service filed.

Jan. 28, 1953. Brief of Defendant filed 1/29/53 P. S. filed.

Jan. 30, 1953. Application of John Caren for Leave to file brief amicus curiae herein filed.

Jan. 30, 1953. Brief Amicus Curiae of Ohio Council of Churches filed.

Jan. 31, 1953. Brief Amicus Curiae of Ohio Catholic Welfare Conference filed.

Feb. 3, 1953. Reply brief of Plaintiff and proof of service filed.

Feb. 5, 1953. Brief Amicus Curiae of Ohio Congress of Parents & Teachers filed.

May 6, 1953. Certified copy of entry sent to Wright, Harlor, Purpus, Morris and Arnold.

June 26, 1953. Petition for Appeal filed.

June 26, 1953. Order allowing appeal filed.

June 26, 1953. Assignments of Error filed.

June 26, 1953. Statement as to Jurisdiction filed.

June 26, 1953. Bond in sum of $500.00, Travelers Indemnity Co. as surety filed.

June 30, 1953. Proof of Service of all papers filed.

July 3, 1953. Citation isued.

July 6, 1953. Praecipe filed.

July 15, 1953. Appellee's statement as to jurisdiction and motion to dismiss or affirm, and proof of service filed.

Judgments, Orders and Decrees

Nov. 17, 1952. Entry granting plaintiff leave to amend petition forthwith. Carl V. Weygandt, CJ J. 40-437.

Nov. 18, 1952. Entry extending time for defendant to plead to Dec. 8, 1952. E. S. Matthias, J. J-40-452.

Dec. 24, 1952. Motion to dismiss, dismissed upon application of defendant. J-40-477.

Jan. 8, 1953. Entry extending time for filing plaintiff's brief to Jan. 17, 1953. Carl V. Weygandt, CJ J-40-485.

Jan. 27, 1953. Entry granting Robert W. Newlon leave to file brief amicus curiae herein on behalf of Ohio Council of Churches on or before Jan. 31, 1953. Carl V. Weygandt, CJ J-40-502.

Jan. 28, 1953. Entry granting Columbus and Franklin County Motion Picture Council leave to file brief amicus curiae on or before Jan. 31, 1953. Carl V. Weygandt, CJ J-40-506.

Jan. 30, 1953. Entry granting John M. Caren leave to file brief amicus curiae herein on or before Jar. 31, 1953. Carl V. Weygandt, CJ J-40-508.

Feb. 2, 1953. Entry granting Congress of Ohio Parents & Teachers, Inc. leave to file brief amicus curiae herein. E. S. Matthias, J. J-40-509.

Apr. 29, 1953. Judgment for Defendant. J-40-588.

[fol. 125] In the Supreme Court of Ohio

Order Granting Leave to File Amended Petition—November 17, 1952

This day there was presented to this Court the written application of the plaintiff, Superior Films, Inc., for leave to file its amended petition herein, and it being made to appear to the Court that good and sufficient reasons exist for the filing of such amended petition, it is accordingly ordered, considered and adjudged that the plaintiff, Su-

perior Films, Inc., be and it hereby is granted leave to file its amended petition herein forthwith.

Carl V. Weygandt, Chief Justice.

IN THE SUPREME COURT OF OHIO

ORDER DISMISSING MOTION TO DISMISS—December 24, 1952

It is ordered by the Court that this motion to dismiss be, and the same hereby is, dismissed upon application of defendant.

IN THE SUPREME COURT OF OHIO

JUDGMENT—April 29, 1953

[fol. 126] This cause came on to be heard upon the Amended Petition, Answer and Stipulation of Counsel and was argued by counsel. On consideration whereof it is ordered and adjudged that judgment be, and the same hereby is, rendered in favor of the defendant for the reasons stated in the opinion rendered in this case.

It is further ordered and adjudged that the plaintiff herein pay the costs herein, taxed at $——, for which execution is awarded.

[fol. 127] IN THE SUPREME COURT OF OHIO

Syllabus

SUPERIOR FILMS, INC.,

vs.

DEPARTMENT OF EDUCATION OF THE STATE OF OHIO, DIVISION OF FILM CENSORSHIP, HISSONG, SUPT.

THE STATE, EX REL. CLASSIC PICTURES, INC.,

vs.

HISSONG, DIR.

CLASSIC PICTURES, INC.,

vs.

DEPARTMENT OF EDUCATION OF THE STATE OF OHIO

Motion pictures—Film censorship—Freedom of speech and press—Constitutional law—Absolute freedom to exhibit not guaranteed—Board of censors—Powers and duties—Legislative power not delegated—Statutory criterion for approval sufficiently definite—Inspection and censorship fees a license fee, not tax.

1. Although expression by means of motion pictures is included within the freedom of speech and the press guaranty of the First Amendment to the federal Constitution, it does not follow that such Constitution guarantees absolute freedom to exhibit motion pictures of every kind at all times and in all places.

2. Legislative power is not delegated, and the guaranty of freedom of speech and the press of the First Amendment to the federal Constitution and Section 11, Article I of the Constitution of Ohio, is not violated, by Sections 154-47 to 154-47*i*, inclusive, General Code, creating a board of censors which is required to examine and censor prior to exhibition motion picture films intended to be publicly exhibited and displayed in the state, and to pass and approve only such films as are, in its judgment, of a moral, educational or amusing and harmless character.

3. The statutory criterion, for the examination and approval by the Division of Film Censorship of moving picture films for public exhibition in the state, that such films shall be of a "moral, educational or amusing and harmless character," is sufficiently clear, definite and comprehensive.

4. The fees required by statute for the inspection and censorship of moving picture films to be publicly exhibited within the state, even though such fees exceed to some extent the necessary cost for making the inspection, constitute license fees and not a tax and are, therefore, not discriminatory or unlawful.

(Nos. 33265, 33282, and 33283—Decided April 29, 1953.)

[fol. 128] STATEMENT OF THE CASE

Petitions to vacate order.

In Mandamus.

These three cases were heard and considered together since the same or similar questions are involved.

In case No. 33265, the plaintiff was the producer and is the owner of a motion picture entitled "M." On September 11, 1952, pursuant to the provisions of Sections 154-47 to 154-47*i*, inclusive, General Code, the plaintiff submitted such motion picture to the Division of Film Censorship of the Department of Education for censorship and approval. On September 16, 1952, the division issued a certificate rejecting the film for distribution and exhibition in the state of Ohio, the grounds of rejection being stated as "on account of being harmful."

On September 25, 1952, the plaintiff commenced this action by filing its petition in this court pursuant to Section 154-47*h*, General Code, and later filed its amended petition seeking to have this court vacate the order of rejection. In its amended petition the plaintiff alleges that the motion picture in question "artistically and dramatically publishes important social problems and either clearly suggest solutions therefor or so dramatically presents each such problem that anyone having an opportunity to see the picture will become vitally interested in such problems and will more readily respond to efforts at a solution thereof in the community in which he lives"; that the statutes in question constitute on their face, as applied to the plaintiff's motion

picture, "M," a prior restraint and censorship for which the standards of criteria are indefinite and vague and are repugnant to the First and Fourteenth Amendments to the [fol. 129] Constitution of the United States and to Sections 2 and 11, Article I of the Constitution of Ohio; and that the statutes, to the extent that they require payment of a fee prior to the distribution and exhibition of motion pictures, are unconstitutional and void.

The answer of the defendant admits that on September 11, 1952, the plaintiff submitted its motion picture, "M," to the defendant for censorship accompanied by the necessary fee, and that on September 16, 1952, defendant rejected the film for distribution and exhibition in the state of Ohio, but denies all other allegations. The case was submitted on a stipulation of facts.

Case No. 33282 is an action in mandamus by Classic Pictures, Inc., to require the respondent to accept for censorship Classic's motion picture, "Native Son," pursuant to the provisions of Sections 154-47 to 154-47i, inclusive, General Code. Respondent's answer alleges that he refused to censor this picture because respondent had previously viewed and considered this motion picture on the application of Classic on three previous occasions after cuts and deletions had been made, and that he had issued a certificate of rejection of the motion picture on November 2, 1951, for the reason, as stated in such certificate, that it was "harmful: because—contributes to racial misunderstanding, presenting situations undesirable to the mutual interests of both races; against public interest in undermining confidence that justice can be carried out; presents racial frictions at a time when all groups should be united against everything that is subversive."

The answer alleges also that Classic failed to appeal from such rejection as provided by law, but on July 22, 1952, filed a petition in this court for a review of the order of rejec- [fol. 130] tion, and that on motion of respondent such petition was dismissed by the court on October 15, 1952. The facts are undisputed.

Case No. 33283 is an action in this court to set aside the order, referred to in case No. 33282, refusing to review the motion picture, and to require the issuance of a certificate approving the same, or in the alternative to direct the de-

fendant to further review the motion picture, or in the alternative to declare "Section 154-47 and subsections 154-47*a* through 154-47*i* of the General Code of Ohio, and each of them, unconstitutional and void."

The answer of the defendant alleges facts substantially the same as in the answer in case No. 33282.

Classic in its brief describes the picture film, "Native Son," as follows:

"* * * The action of the story takes place in Chicago, and part of the picture was filmed there. The role of the central character, Bigger Thomas, an embittered young negro, is acted by Richard Wright, the author of the book. Bigger accidentally kills a white girl, Mary Dalton, and after disposing of her body, attempts to extort money from her parents by means of a ransom note. After the murder is discovered, Bigger goes into hiding with his sweetheart, Bessie Mears, and immediately before his capture, murders Bessie in the mistaken belief that she betrayed him. The picture ends with a scene between Bigger and his lawyer, in which it is made clear that Bigger will be electrocuted for his crimes."

No record has been made in this case. Classic seeks to treat the refusal of the defendant to issue a certificate as a final order and to obtain its vacation.

COUNSEL FOR PARTIES

Messrs. Wright, Harlor, Purpus, Morris & Arnold, for plaintiff in case No. 33265.

Messrs. Brownfield, Ford & Douglas, Mr. C. William [fol. 131] Malone and Mr. Ephraim S. London, for relator and for plaintiff in case No. 33283.

Mr. C. William O'Neill, attorney general, Mr. Robert E. Leach and Mr. Gwynne B. Myers, for defendants and respondent.

HART, J.:

The plaintiff in case No. 33265 submits that the question presented is whether "motion pictures, as distinguished from other media of human expression, may be subjected to censorship in advance of publication; or, whether motion

pictures, along with such other media, are entitled to protection from all restraint except such as is incident to responsibility for abuse."

On the other hand, the defendant states his basic position as follows:

"The impact of the motion picture, the unrestricted audience, and the subject matter of those films which experience shows have been rejected, taken together present an area of proper interest for Ohio and an area which can be constitutionally regulated. The standards of regulation under this statute have acquired in this court and through administrative experience a definiteness which complies with procedural due process of law. The Division of Film Censorship acted reasonably and within the proper bounds of its discretion in rejecting the motion picture 'M.' The question of the tax or license characteristics of the fee provided is regarded as a separate and collateral question. It is plainly a license fee though some surplus revenue has been produced. Irrespective of that, however, plaintiff voluntarily paid the fee and by all ordinary principles of law should be estopped from making his voluntary act the basis for a constitution challenge."

In 1913, the Ohio General Assembly adopted a motion picture censorship act providing for a Board of Censors [fol. 132] to operate under the authority and supervision of the Industrial Commission. Section 871-48, General Code, a part of the act, provided that "it shall be the duty of the Board of Censors to examine and censor as herein provided, of motion picture films to be publicly exhibited and displayed in the state of Ohio."

Section 871-49 provided that "only such films as are in the judgment and discretion of the Board of Censors of a moral, educational or amusing and harmless character shall be passed and approved by such board."

In 1935, the censorship body was designated as the "Division of Film Censorship of the Department of Education" (116 Ohio Laws, 100). In 1943, Section 871-48, General Code, became present Section 154-47, General Code, and Section 871-49, General Code, became present Section 154-47*b*, General Code (120 Ohio Laws, 481), but the language

of the statutes as above quoted has remained practically the same.

In 1914, the constitutionality of the Ohio censorship act, as above noted, was under consideration by the Supreme Court of the United States in the case of *Mutual Film Corp. v. Industrial Commission of Ohio*, 236 U. S., 230, 59 L. Ed., 552, 35 S. Ct., 387, Ann. Cas. 1916C, 296.

In that case the act was attacked from three standpoints as follows: (1) That the act was in violation of Sections 5, 16 and 19 of Article I of the Constitution of Ohio in that it deprived an applicant of due process of law by placing in the board of censors the power to determine from standards fixed by itself what films conformed to the statute; (2) that the act was in violation of Articles I and XIV of the Amendments to the Constitution of the United States, and of Section 11 of Article I of the Constitution of Ohio, in that it restrained applicant and other persons from freely writing [fol. 133] and publishing their sentiments; and (3) that the act attempted to give the board of censors legislative power, which is vested only in the General Assembly, in that it gave to the board the power to apply the act without fixing any standard by which the board should be guided in its determination.

The court there held legislative power is not delegated and the freedom of speech and publication guaranteed by Section 11, Article I of the Ohio Constitution, is not violated by the provisions of Sections 154-47 to 154-47*i*, inclusive, General Code, creating a board of censors which is required to examine and censor prior to exhibition motion picture films intended to be publicly exhibited and displayed in the state, and to pass and approve only such films as are, in its judgment, of a moral, educational, or amusing and harmless character.

In that case Justice McKenna said:

"* * * Films of a 'moral, educational or amusing and harmless character shall be passed and approved' are the words of the statute. No exhibition, therefore, or 'campaign' of complainant will be prevented if its pictures have those qualities. Therefore, however missionary of opinion films are or may become, however educational or entertaining, there is no impediment to their value or effect in the

Ohio statute. But they may be used for evil, and against that possibility the statute was enacted. Their power of amusement and, it may be, education, the audiences they assemble, not of women alone nor of men alone, but together, not of adults only, but of children, make them the more insidious in corruption by a pretense of worthy purpose or if they should degenerate from worthy purpose. Indeed, we may go beyond that possibility. They take their attraction from the general interest, eager and wholesome it may be, in their subjects, but a prurient interest may be [fol. 134] excited and appealed to. Besides, there are some things which should not have pictorial representation in public places and to all audiences. And not only the state of Ohio but other states have considered it to be in the interest of the public morals and welfare to supervise moving picture exhibitions. We would have to shut our eyes to the facts of the world to regard the precaution unreasonable or the legislation to effect it a mere wanton interference with personal liberty.

"* * *

"* * * It cannot be put out of view that the exhibition of moving pictures is a business pure and simple, originated and conducted for profit, like other spectacles, not to be regarded, nor intended to be regarded by the Ohio Constitution, we think, as part of the press of the country or as organs of public opinion. They are mere representations of events, of ideas and sentiments published and known, vivid, useful and entertaining no doubt, but, as we have said, capable of evil, having power for it, the greater because of their attractiveness and manner of exhibition. It was this capability and power, and it may be in experience of them, that induced the state of Ohio, in addition to prescribing penalties for immoral exhibitions, as it does in its Criminal Code, to require censorship before exhibition, as it does by the act under review. We cannot regard this as beyond the power of government."

The plaintiff asserts that the free speech and press guaranty of the First Amendment to the Constitution of the United States is secured from infringement by the state by the Fourteenth Amendment to that Constitution, and that the guaranties of Sections 2 and 11, Article I of the Con-

stitution of Ohio, are coextensive therewith (*Joseph Burstyn, Inc.*, v. *Wilson, Commr.*, 343 U. S. 495, 500, 96 L. Ed. 1098, 72 S. Ct. 777; *Direct Plumbing Supply Co.* v. [fol. 135] *City of Dayton*, 138 Ohio St., 540, 38 N. E. [2d], 70, 137 A. L. R., 1058); and that motion pictures are a mode of expression entitled to the same protection as "speech" and "the press" (*Burstyn, Inc.* v. *Wilson, Commr., supra*; *Gelling* v. *Texas*, 343 U. S. 960, 96 L. Ed. 1359, 72 S. Ct. 1002; *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, 166, 92 L. Ed. 1260, 1297, 68 S. Ct. 915). Upon that premise plaintiff then contends that Sections 154-47 to 154-47*i*, inclusive, General Code, are an unconstitutional prior restraint upon the exhibition of motion pictures equivalent to prior restraint upon freedom of speech and the press.

Chief reliance in support of plaintiff's position is placed upon the recent pronouncement of the Supreme Court of the United States in the case of *Burstyn, Inc.* v. *Wilson, Commr., supra*, decided May 26, 1952, in which was reversed the judgment of the Court of Appeals of New York (303 N. Y. 242, 101 N. E. [2d] 665). In that case a license for the exhibition of a motion picture entitled "The Miracle" was rescinded by the appropriate New York authorities on the ground that the picture was "sacrilegious" within the meaning of the statute requiring the denial of a license if a film is "obsence, indecent, immoral, inhuman, sacrilegious, or is of such a character that its exhibition would tend to corrupt morals or incite to crime." The statute was upheld by the New York state courts but the United States Supreme Court reversed by a unanimous decision. The court based its reversal solely on the ground that the New York statute is an "unconstitutional abridgement of free speech and a free press."

The court in that case, after reviewing an Ohio motion picture case decided by it almost 40 years ago (*Mutual Film Corp.* v. *Industrial Commission of Ohio, supra*), said: [fol. 136] "In a series of decisions beginning with *Gitlow* v. *New York*, 268 U. S. 652 (1925) [and including *Stromberg* v. *California*, 283 U. S. 359, 368; *Near* v. *Minnesota, ex rel. Alson*, 283 U. S. 697, 707; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 244; *DeJonge* v. *Oregon*, 299 U. S. 353, 364; *Lovell* v. *Griffin*, 303 U. S. 444, 450; *Schneider* v. *State*, 308

U. S. 147, 160], this court held that the liberty of speech and of the press which the First Amendment guarantees against abridgement by the federal government is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action. That principle has been followed and reaffirmed to the present day. Since this series of decisions came after the *Mutual* decision, the present case is the first to present squarely to us the question whether motion pictures are within the ambit of protection which the First Amendment, through the Fourteenth, secures to any form of 'speech' or 'the press.' "

Further excerpts from the opinion reveal the points stressed and the attitude of the court on the whole subject.

The court continued:

"It is further urged that motion pictures possess a greater capacity for evil, particularly among the youth of a community, than other modes of expression. Even if one were to accept this hypothesis, it does not follow that motion pictures should be disqualified from First Amendment protection. If there be capacity for evil it may be relevant in determining the permissible scope of community control, but it does not authorize substantially unbridled censorship such as we have here.

"For the foregoing reasons, we conclude that expression by means of motion pictures is included within the free speech and free press guaranty of the First and Fourteenth [fol. 137] Amendments. To the extent that language in the opinion in *Mutual Film Corp.* v. *Industrial Commission, supra,* is of harmony with the views here set forth, we no longer adhere to it." See *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, 166, 92 L. Ed. 1260, 1297, 68 S. Ct. 915.

The court further said:

"To hold that liberty of expression by means of motion pictures is guaranteed by the First and Fourteenth Amendments, however, is not the end of our problem. It does not follow that the Constitution requires absolute freedom to exhibit every motion picture of every kind at all times and all places. That much is evident from the series of decisions of this court with respect to other media of communication

of ideas [citing *Feiner* v. *New York*, 340 U. S. 315; *Kovacs* v. *Cooper*, 336 U. S. 77; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568; *Cox* v. *New Hampshire*, 312 U. S. 569]. Nor does it follow that motion pictures are necessarily subject to the precise rules governing any other particular method of expression. Each method tends to present its own peculiar problems. But the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by this court, make freedom of expression the rule. There is no justification in this case for making an exception to that rule.

"* * * It was further stated [in *Near* v. *Minnesota, ex rel. Alson, County Atty., supra*] that 'the protection even as to previous restraint is not absolutely unlimited. But the limitation has been recognized only in exceptional cases,' *Id.*, at 716. In the light of the First Amendment's history and of the *Near* decision, the state has a heavy burden to demonstrate that the limitation challenged here presents such an exceptional case."

[fol. 138] The court then discussed as follows the character of the New York statute and its application:

"In seeking to apply the broad and all-inclusive definition of 'sacrilegious' given by the New York courts, the censor is set adrift upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies. New York cannot vest such unlimited restraining control over motion pictures in a censor. Cf. *Kunz* v. *New York*, 340 U. S. 290 (1951). Under such a standard the most careful and tolerant censor would find it virtually impossible to avoid favoring one religion over another, and he would be subject to an inevitable tendency to ban the expression of unpopular sentiments sacred to a religious minority. * * *

"Since the term 'sacrilegious' is the sole standard under attack here, it is not necessary for us to decide, for example, whether a state may censor motion pictures under a clearly drawn statute designed and applied to prevent the showing of obscene films. That is a very different question from the one now before us."

It will be noted that in the *Near case* the Supreme Court stated that "the primary requirements of decency may be enforced against obscene publication," and in the case of *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571, 86 L. Ed. 1031, 1034, 62 S. Ct. 766, Justice Murphy, speaking for a unanimous court, said: "There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace."

[fol. 139] In the case of *Commercial Pictures Corp.* v. *Regents of University of New York*, 114 N. Y. Supp. (2d), 561, decided since the *Burstyn* case, the court sustained the order of the Regents of the University of New York refusing to license for exhibition a picture film entitled "LaRonde," in connection with which the court, referring to the *Burstyn* case, said:

"We have no doubt, however, both from the area that was expressly left open in that case by the Supreme Court and from the generally accepted power of a state to deal by its municipal law with matters deemed offensive to public morals that the statute delegating the power of licensing to the Regents remains valid to that extent in a proper case."

The summary of Ohio law on the subject as expressed in 8 Ohio Jurisprudence, 468, Section 342, is as follows:

"Liberty of speech, then, is not license to speak anything that one pleases freed from all criminal or civil responsibility. And liberty of press does not extend to the privilege of publishing and disseminating baneful and harmful matter, or of inciting the people to violate laws. The police power, of course, constitutes a legitimate qualification of freedom of speech and press. Certainly this constitutional guaranty does not deprive the state of its power to enact laws for the protection of the public health, morals, safety, and welfare. Accordingly, motion picture censorship has been sustained."

From these expressions of the United States Supreme Court and otherwise, we conclude that, although a motion picture film may not be rejected because of "sacrilegious" expressions or portrayals, there still remains a limited field in which decency and morals may be protected from the impact of an offending motion picture film by prior restraint under proper criteria. There can be no inherent right to [fol. 140] publicity which tends to destroy the very social fabric of the community, and consequently in such instances there is no right of free speech or free press to be infringed. In these times of alarming rise in juvenile delinquency and of increasing criminality in this country, attributed by social agencies, at least in part, to the character of the exhibitions put on in the show houses of the country, criminal prosecution after the fact is a weak and ineffective remedy to meet the problem at hand. In the war against crime and delinquency there must be some effective defensive weapons against immoral publicity, whereby the social fabric may be protected as it is by law from other methods of attack. The chief problem with reference to publicity by exhibition is to protect that which is of such character as to invest its publisher with a right to publish, and at the same time restrain publicity as to which no such right exists.

As we view it, the United States Supreme Court has not *ipso facto* taken away all community control of moving pictures by censorship, and this court will not do so under the claim of complete unconstitutionality of censorship laws.

The motion picture, "M," as shown by the certificate was rejected for the following reasons, among others:

"1. There is a conviction that the effect of this picture on unstable persons of any age level could lead to a serious increase in immorality and crime.

"2. Presentation of actions and emotions of child killer emphasizing complete perversion without serving any valid educational purpose. Treatment of perversion creates sympathy rather than a constructive plan for dealing with perversion."

The plaintiff claims that the division abused its discretion in rejecting the motion picture in question and in refusing to grant its approval for exhibition. This court has [fol. 141] before it only the script and general description

of the content and character of the film as given in the respective briefs of the parties.

The plaintiff claims that the picture is artistic, free from vulgarity and immorality; that its purpose is "to so impress its viewers with the consequences of neglect and apathy that affirmatively moral and righteous attitudes toward the problems dramatized will result"; that it is educational because "it reveals to its audience the sources of five significant contemporary social problems, and then, either proposes a solution, or appeals for public understanding and action"; and that it is not harmful.

The defendant describes the picture as follows:

"This motion picture is filled with brutal crime. Two cold blooded murders are presented, another implied and a third attempted. A schizophrenic killer is treated with sympathy and an underworld boss is depicted as vastly more efficient than the police. Twice, the methods for abducting children on the streets are elaborated."

Incidentally, stipulation eight shows that, for the period January 1, 1943, to January 1, 1953, 17,741 motion picture films have been approved by the Division of Film Censorship and 59 rejected. Fifteen of the pictures so rejected were later approved, leaving 44 remaining unlicensed.

It is apparent that the lofty purposes of the picture, as expressed by its producers, would appeal only to a limited number of its viewers, whereas the great majority of a promiscuous audience, including children, would be impressed and affected merely by the exhibitionism and the portrayal of evil conduct in society, which the producers admit is so bad as to need radical correction.

The plaintiff claims also that Sections 154-47 to 154-47i, inclusive, General Code, which authorize a prior censorship [fol. 141a] and restraint, the criteria for acceptable pictures being that they be of a "moral, educational or amusing and harmless character," are by their language and as applied to the plaintiff indefinite, vague and incompatible with and repugnant to the First and Fourteenth Amendments to the Constitution of the United States and Sections 2 and 11, Article I of the Constitution of Ohio.

Plaintiff does not complain so much of the criteria established for the approval of films but attacks the requirement

of censorship generally on the ground that such approval must be given before *any* film may be exhibited. The criteria by which films shall be judged under the terms of the statute could doubtless have been made more definite, but where such criteria, expressed in the reverse form, excludes, as it does, only such films as are "immoral," "noneducational" or "nonamusing," or, adding the word, "harmful," as are "immoral *and* harmful," "noneducational *and* harmful," or "nonamusing *and* harmful," the tests are sufficiently definite. No film which has a right to public exhibition can be excluded or rejected. In our opinion, the statutory tests provided may be applied without great difficulty. In this connection, it is interesting to note that the criminal statute of the state defining the felony of exhibiting a picture of "an indecent or immoral nature" is no more definite and certain in terms. Section 13035, General Code, provides:

"Whoever knowingly * * * exhibits * * * motion picture film * * * of an indecent or immoral nature * * * shall be fined not less than two hundred dollars nor more than two thousand dollars or imprisoned not more than seven years, or both."

Again, Section 13040, General Code, defining the felony of owning and operating a picture machine to exhibit certain types of pictures is as follows:

[fol. 141b] "Whoever * * * owns or operates * * * a picture machine or other device exhibiting a lascivious, indecent, immoral or impure picture or figure or a picture of crime or lust, or a picture tending to corrupt morals, shall be fined not less than fifty dollars nor more than five hundred dollars, and for each subsequent offense, in addition to such fine, shall be imprisoned not less than thirty days nor more than six months."

In those statutes the definitions of the crimes were made sufficiently clear in order to give notice of the exact limits of the forbidden act to a possible offender. This is not necessarily true as to the test in the approval or disapproval of a picture film. The criteria by which a picture film may be approved or rejected must be sufficiently definite to enable a reviewing court to properly review the determination of the administrative body passing upon the character of the

picture film. See the opinion of Mr. Justice Frankfurter in *Burstyn* v. *Wilson, Commr., supra,* 532. Plaintiff in this case inferentially accedes to this test by seeking to have this court, as an alternative, review the record and set aside the order of rejection based upon the character and merits of the picture film, and this court has had several occasions to exercise such review. *Epoch Producing Corp.* v. *Riegel, Dir.*, 113 Ohio St., 697, 150 N. E., 756, and *Hallmark Productions, Inc.*, v. *Dept. of Education, Division of Film Censorship*, 153 Ohio St., 595, 93 N. E. (2d), 13.

We submit that the definitions of the crimes above referred to are no more certain and definite than the criteria in the motion picture censorship code, and that the judge or jury in determining whether there was a violation of those criminal statutes would be required to exercise the same scope of judgment as would the division in the approval or disap-
[fol. 142] proval of a picture film. Besides, if discretion is abused, ample provision is made to correct the mistake on judicial review. Furthermore, the tests of the censorship statute have over a period of over 40 years acquired a definite and circumscribed meaning.

As stated in defendant's brief, "the standards have enjoined the obscene, the immoral, and that which tended to promote crime or riot, judged in relation to the impact and the audience. The experience of the past decade indicates that not one of the forty-four films rejected fell outside of that test. It is especially pertinent to observe that of the ten outstanding films pointed to by plaintiff as examples of films dealing with questions of great public importance, each has been licensed and exhibited throughout Ohio. This but demonstrates the value of the licensing system. The controversial problems of 'Pinky' may have free access to the minds of Ohio's adults and children; the obscenity of 'Sinful Love,' the immorality of 'My Last Mistress,' the dangerous criminal aspects of 'Apology for Murder' and 'M' may not."

The criteria and standards of the Ohio statute have had the attention of the United States Supreme Court wherein their definiteness has been recognized. In *Mutual Film Corp.* v. *Industrial Commission, supra*, the court held that the criteria of the statute did leave decision to arbitrary judgment, but were deemed to have acquired precision from

the judgment and experience of administrators. It is to be observed that the holding of the court on this branch in the *Mutual* case was not overruled or criticised in the *Burstyn* case. In fact, in that case Mr. Justice Frankfurter, with whom Mr. Justice Burton and Mr. Justice Jackson joined in striking down the term, "sacrilegious," contrasted that indefinite term with the standards of the Ohio act in these words:

"* * * Even in *Mutual Film Corp.* v. *Ohio Industrial Comm'n* * * * it was deemed necessary to find that the [fol. 143] terms 'educational, moral, amusing or harmless' do not leave 'decision to arbitrary judgment.' Such general words were found to 'get precision from the sense and experience of men.' * * * This cannot be said of 'sacrilegious.' If there is one thing that the history of religious conflicts shows, it is that the term 'sacrilegious'—if by that is implied offense to the deep convictions of members of different sects, which is what the Court of Appeals seems to mean so far as it means anything precisely—does not gain 'precision from the sense and experience of men.'

"* * * Well equipped law libraries are not niggardly in their reflection of 'the sense and experience of men,' but we must search elsewhere for any which gives to 'sacrilege' its meaning." See, also, *Winters* v. *New York*, 333 U. S., 507, 518, 92 L. Ed., 840, 68 S. Ct. 665; *Omaechevarria* v. *State of Idaho*, 246 U. S., 343, 62 L. Ed., 763, 38 S. Ct., 323; *Waters-Pierce Oil Co.* v. *State of Texas*, 212 U. S., 86, 53 L. Ed., 417, 29 S. Ct., 220; *Gorin* v. *United States*, 312 U. S., 19, 85 L. Ed., 488, 61 S. Ct., 429.

Our attention is called to the case of *Gelling* v. *State of Texas, supra*, as being decisive of the instant cases. As disclosed by the *per curiam* opinion in that case, it was decided on authority of *Joseph Burstyn, Inc.*, v. *Wilson, Commr., supra*, and *Winters* v. *New York, supra*, without further statement or reason.

We have already considered the *Burstyn* case. In the *Winters* case, a New York statute made it an offense to publish and distribute publications "principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime." In an opinion by Mr. Justice Reed, concurred in

by five members of the court, it was held that the statute did not set up a sufficiently definite standard of conduct. Mr. Justice Frankfurter, with the concurrence of Mr. Jus- [fol. 144] tice Jackson and Mr. Justice Burton, dissented on the ground that the statute made incitement to crime an offense and for that purpose was sufficiently definite, even though one desiring to avoid violation of the law might be mistaken in attempting to guess the jury's appraisal of the effect of the publication.

In the *Gelling* case, above noted, the appellant was convicted under an ordinance of the city of Marshall, Texas, for exhibiting a picture after being denied a license to do so. The ordinance authorized the licensing board to deny a license to show a motion picture which, *in its opinion*, was "of such character as to be prejudicial to the best interests of the people of said city." Mr. Justice Frankfurter, concurring in the judgment of reversal, said: "This ordinance offends the due process clause of the Fourteenth Amendment on the score of indefiniteness." This reason for invalidity carries with it the implication that under a proper statute motion pictures may be subjected to reasonable censorship. Conceding that the Marshall ordinance was void for indefiniteness, it does not suggest that the criteria of our licensing statute are insufficient or that it should be stricken down for that reason.

Lastly, plaintiff claims that the fees for the censorship of moving picture films under the statute in question, calculated at the rate of $3 per 1,000 lineal feet of film or portions thereof, are not license fees but an excise tax and therefore discriminatory and unlawful because these fees are in excess of the necessary cost in making the inspection. The record discloses that the fees paid from January 1, 1943, to June 30, 1952, amounted to $2,229,960.59, whereas the operating cost of the division for the same period was a total of $334,364.56, the balance being distributed to the General Revenue Fund of the state and the visual educational rotary fund as provided by statute. It should be [fol. 145] observed, however, that the cost of operation of the division does not reflect other heavy governmental and facility costs incidental to the operation of the division. The state is obliged to furnish housing and other facilities as well as the service of the legislative and judicial branches

of the state government in carrying on the license system, the cost of all of which is outside the operational cost of the division. See *Globe Security & Loan Co.* v. *Carrel, Aud.*, 106 Ohio St., 43, 48, 138 N. E., 364.

Besides the plaintiff paid the fee for inspection without protest and does not seek its recovery. Neither has it enjoined the levy of the fee as it could do, if it were illegal under the provisions of Section 12075, General Code. Under such circumstances, the plaintiff is estopped in this action to complain on this point. *King* v. *Cappellar*, 42 Ohio St., 218; *Wilson* v. *Pelton*, 40 Ohio St., 306; *State, ex rel. Pulskamp*, v. *Board of County Commrs.*, 119 Ohio St., 504, 164 N. E., 755; *State, on Application of Alter*, v. *Bader et al., Commrs.*, 56 Ohio St., 718, 47 N. E., 564.

From the evidence before this court we cannot say that the defendant abused his discretion in refusing to approve the picture film in question. The division, representing the public interest, has made its decision and this court cannot find affirmatively that it was in error in so doing. The prayer of the petition is denied.

In case No. 33282, the court disagrees with the position of the respondent. The court, therefore, allows the writ and directs the respondent to re-examine and pass upon the film there involved.

Since in case No. 33283 no order was made by the Division of Film Censorship, the remedy, if any, is mandamus. The petition is dismissed.

Judgments accordingly.

[fols. 146-147] WEYGANDT, C. J., MIDDLETON, MATTHAIS and ZIMMERMAN, JJ., concur.

Taft and Stewart, JJ., dissent in case No. 33265, but concur in cases Nos. 33282 and 33283.

TAFT, J., dissenting.

I must dissent because bound by the construction put upon the Constitution of the United States by the Supreme Court of the United States. The pronouncements of the law by that court in *Joseph Burstyn, Inc.*, v. *Wilson, Commr.*, 343 U. S., 495, 96 L. Ed., 1098, 72 S. Ct., 777, and the later decision of that court in *Gelling* v. *Texas*, 343 U. S., 960, 96

L. Ed., 1359, 72 S. Ct., 1002, clearly require the conclusion that the Ohio moving picture censorship statutes are void because of the provisions of the Constitution of the United States.

STEWART, J., concurs in the foregoing dissenting opinion.

Reporter's Certificate to foregoing paper omitted in printing.

[fol. 148] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 149] IN THE SUPREME COURT OF THE UNITED STATES

October Term, A. D. 1953

No. 217

SUPERIOR FILMS, INC., Appellant,

vs.

DEPARTMENT OF EDUCATION OF THE STATE OF OHIO, DIVISION OF FILM CENSORSHIP, CLYDE HISSONG, Superintendent, Appellee

---

STATEMENT OF POINTS TO BE RELIED UPON, DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED AND STIPULATION—Filed August 10, 1953

In accordance with paragraph 9, rule 13 of the Rules of the Supreme Court of the United States, Superior Films, Inc., appellant, herewith submits its statement of the points upon which it intends to rely, to-wit:

(1) Ohio G. C. Sections 154-47—154-47i, inclusive, on their face and as applied to appellant are a prior restraint and censorship of speech and of the press in violation of and repugnant to the First and Fourteenth Amendments of the Constitution of the United States;

(2) Said statutes which authorize and require prior restraint and censorship of speech and of the press, for

which the criteria are the terms "moral, educational or amusing and harmless", and which authorize and require the revocation of any certificate of approval [fol. 150] thereof if "the public welfare requires it" are, on their face and as applied to appellant, indefinite and vague standards incompatible with and repugnant to the requirements of the First and Fourteenth Amendments of the Constitution of the United States;

(3) Said statutes which authorize and require prior restraint and censorship of motion pictures and the order of appellee pursuant thereto are, on their face and as applied to appellant, a discriminatory denial of equal protection of the law incompatible with and repugnant to the Fourteenth Amendment of the Constitution of the United States;

(4) Said statutes and the order of appellee pursuant thereto, on their face and as applied to ban appellant's motion picture "M" are incompatible with and repugnant to the First and Fourteenth Amendments of the Constitution of the United States;

(5) Said statutes, in requiring the payment of a fee as a condition to censorship, distribution and exhibition of motion pictures, impose an undue burden on such distribution and exhibition, and thus, upon their face and as applied to appellant, are incompatible with and repugnant to the First and Fourteenth Amendments of the Constitution of United States;

and herewith submits its designation of the parts of the record in addition to those parts required by law, the Federal Rules of Civil Procedure and the Rules of the Supreme Court of the United States, which it deems necessary for the consideration thereof, to-wit:

(1) The record of proceedings of Division of Film Censorship, Department of Education of the State of Ohio.

(2) Plaintiff's Amended Petition.

(3) Defendant's Answer to Amended Petition.

(4) Agreed stipulation and exhibits.

(5) Judgment.

(6) Petition for Appeal to Supreme Court.

(7) Assignment of Errors.

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the appellant's Exhibit A, as it is set forth in stipulation number 2 in the record below, the print of appellant's motion picture "M" consisting of 10 reels of film enclosed in two metal [fol. 151] cases, weighing approximately fifty pounds each, need not be printed, but the same may be referred to on the argument of the appeal by either party and may be submitted to this court with the same force and effect as if printed, said exhibit being in the possession of appellee and therefore available for showing to the court.

Francis J. Wright, Attorney for Superior Films, Inc., 17 S. High Street, Columbus 15, Ohio.
Of Counsel: John C. Harlor, Carl F. Morris.

Undersigned counsel for appellee hereby accepts and acknowledges service of copy of the foregoing statement of points to be relied upon, designation of the parts of the record to be printed and stipulation, and further stipulates and agrees that the parts of the record to be printed as therein shown are sufficient for consideration of the questions presented in the appeal of this case.

C. William O'Neill, Attorney General, by Hugh A. Sherer, Assistant Attorney General, Attorney for Defendant-Appellee.

[fols. 152-153] [File endorsement omitted.]

[fol. 154] SUPREME COURT OF THE UNITED STATES

October Term, 1953

No. 217

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—October 12, 1953

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

The Chief Justice took no part in the consideration or decision of this question.

LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1953

No. 274

COMMERCIAL PICTURES CORPORATION,
APPELLANT,

vs.

THE REGENTS OF THE UNIVERSITY OF THE
STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

FILED AUGUST 19, 1953

Probable jurisdiction noted October 26, 1953

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 274

COMMERCIAL PICTURES CORPORATION,
APPELLANT,

vs.

THE REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

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[fol. 1]

IN SUPREME COURT — APPELLATE DIVISION — THIRD DEPARTMENT

In the Matter of the Application of COMMERCIAL PICTURES CORPORATION, Petitioner,

For An Order Against the REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK, Respondents

STATEMENT UNDER RULE 234

This proceeding was commenced by the service of a notice of motion and a petition on the 26th day of October, 1951, for an order against the Regents of the University of the State of New York annulling the determination of the respondents which refused to grant a license for the public exhibition of the motion picture "La Ronde" and directing said respondents to issue such license to the petitioner.

On the 30th day of October, 1951, the attorneys for the petitioner stipulated with the attorney for the respondent that this proceeding returnable at Special Term of the Supreme Court on November 23, 1951, be remitted by order of the Court to the Appellate Division, Third Department, pursuant to Article 78 of the Civil Practice Act.

[fol. 2] Thereafter on the 23rd day of November, 1951, an order of the Supreme Court was entered, transferring the proceeding for disposition in the first instance to a Term of the Appellate Division of the Supreme Court, Third Judicial Department.

The return to the said notice of motion and petition, consisting of respondents' answer was served on the 15th day of November, 1951 and filed in the office of the Clerk of the County of Albany.

The petitioner appeared by Nemeroff, Jelline, Danzig and Paley, its attorneys, and the respondents by Charles A. Brind, Jr.

This proceeding was commenced by the petitioner, the Commercial Pictures Corporation against the Regents of the University of the State of New York, and there has been no change in the parties or attorneys.

[fol. 3] IN SUPREME COURT OF NEW YORK SPECIAL TERM, COUNTY OF ALBANY

ORDER TRANSFERRING PROCEEDING TO APPELLATE DIVISION—November 23, 1951

[Title omitted]

Upon reading and filing the notice of motion and petition, verified October 26, 1951, together with the affidavit of Gaston Hakim sworn to the 26th day of October, 1951 and exhibits A, B, C and D annexed thereto, for an order annulling the determinations of the respondents in refusing to grant a license for the public exhibition of the motion picture La Ronde and directing the respondents to issue such a license to the petitioner; and upon reading and filing the answer of the respondents verified the 14th day of Novem-
[fol. 4] ber, 1951, together with exhibits 1, 2, 3 and 4, annexed thereto, and the stipulation dated October 30, 1951, wherein it is agreed by and between the attorneys for the respective parties that this proceeding be remitted by order of the court to the Appellate Division, Third Department,

Now, on motion of Charles A. Brind, Jr., attorney for the respondents,

It is ordered, that the proceedings herein be transferred for disposition, pursuant to Section 1296 of the Civil Practice Act, to the Appellate Division of the Supreme Court, Third Department.

Enter,

(S.) Kenneth S. MacAffer, J. S. C.

[fol. 5] STATE OF NEW YORK IN SUPREME COURT OF NEW YORK COUNTY OF ALBANY

STIPULATION—October 30, 1951

It is hereby stipulated and agreed by and between the respective parties hereto that this proceeding returnable at Special Term on November 23, 1951, be remitted by order

of the Court to the Appellate Division, Third Department, pursuant to Article 78 of the Civil Practice Act.

Dated, the 30th day of October, 1951.

Florence Perlow Shientag, Nemeroff, Jelline, Danzig & Paley, by Bernard S. Nemeroff, Attorneys for Petitioner. Charles A. Brind, Jr., per E. W. E., Attorney for Respondents.

[fol. 6] In Supreme Court of New York, County of Albany

Notice of Motion

Sirs:

Please take notice, that upon the annexed Petition of Commercial Pictures Corporation, duly verified the 26th day of October, 1951, and the affidavit of Gaston Hakim, duly sworn to the 26th day of October, 1951 and exhibits annexed thereto, the undersigned will move this Court at a Special Term, Part I thereof, to be held at the Court House, in the City and County of Albany, New York, on the 23rd day of November, 1951 for an Order annulling the determination of the respondents which refused to grant a license for the public exhibition of the motion picture "La Ronde", and directing said respondents to issue such license to the Petitioner, and for such other and further relief as to the Court may seem just and proper.

Yours, &c., Nemeroff, Jelline, Danzig & Paley, Attorneys for Petitioner.

To: Regents of the University of the State of New York, Albany, New York.

[fol. 7] IN SUPREME COURT OF NEW YORK, COUNTY OF ALBANY

PETITION, READ IN SUPPORT OF MOTION—October 26, 1951

To the Supreme Court of the State of New York:

The petition of Commercial Pictures Corporation by Gaston Hakim, Managing Director of Sales, respectfully alleges:

1. That at all times hereinafter mentioned Commercial Pictures Corporation was and now is a California Corporation engaged in the production and exhibition of motion pictures.

2. That at all times hereinafter mentioned, said Corporation was and now is sole owner of the distribution rights of the motion picture "La Ronde" in the United States of America.

3. That pursuant to Sections 120 and 122 of the Education Law of the State of New York, the Petitioner by Robert Hakim, President of the Corporation, applied to the Director of the Motion Picture Division of the New York State Education Department for a license to exhibit the motion picture "La Ronde", and pursuant to Section 122 such motion picture was examined by said Motion Picture Division of the New York State Education Department and a license was refused on April 4, 1951.

[fol. 8] 4. That the Petitioner was refused a license to exhibit said motion picture "La Ronde" on the ground that the Board of Review of the Motion Picture Division of the Board of Regents had concluded that said motion picture was immoral and tended to corrupt morals, within the meaning of Section 122, Article 3, Part II of the New York State Education Law.

5. That the Petitioner, by Robert Hakim, its President, then caused said motion picture to be edited and resubmitted, and on April 13, 1951 a license for exhibition of said motion picture was again refused by said Director of the Motion Picture Division of the New York State Education Department.

6. Thereupon, your Petitioner appealed the action of the Director of the Motion Picture Division to the Board of Regents of the State of New York. On the 5th day of July,

1951, your Petitioner's attorney was notified by the State Education Department of its decision dismissing the appeal of the Petitioner, a copy of which decision is attached hereto and marked "Petitioner's Exhibit A".

7. That such motion picture "La Ronde", contrary to the opinion incorporated in the decision of the Board of Regents, is not immoral nor indecent, nor does it tend to corrupt morals within the purview of Section 122 of the New York State Education Law.

8. That said motion picture has been exhibited throughout the United States and has been reviewed by the premier [fol. 9] motion picture critics of eminent publications, and in most instances said motion picture has been reviewed by said critics with particular attention paid to any possible immoral implications, and that as a result thereof the opinion of said critics is that the motion picture "La Ronde" is not prurient, smirking or pornographic, and does not exploit sex as is charged by the Director of the Motion Picture Board of Review of the State of New York and by the Board of Regents, and that said motion picture does not tend to corrupt morals nor is it indecent.

9. That attached hereto and marked "Petitioner's Exhibit B" are reviews from Time Magazine, News Week, Washington, D. C. Evening Star, Washington Post, Washington, D. C. Daily News, Los Angeles Times, Los Angeles Daily News, Illustrated London News, and other publications, which said critiques are themselves evidence as to the moral characteristics of the motion picture.

10. That the Petitioner has in no way attempted to exploit, or highlight promiscuity or a sex angle by said motion picture "La Ronde", and in fact, has advertised the picture solely for its artistic merit which has been acclaimed throughout the world.

11. That attached hereto marked "Petitioner's Exhibit C" are typical advertisements placed by the Petitioner exploiting said motion picture "La Rhonde" in states other than New York.

12. That the officers and directors of the Petitioner, the [fol. 10] Hakim brothers, have achieved an enviable reputation in the film industry for the production of meritorious and artistic pictures, and that the refusal by the Board of

Regents to issue a license for the motion picture "La Ronde" in the face of universal acclaim destroys the reputation for integrity and artistic ability in the motion picture field which has been heretofore enjoyed by the Hakim brothers.

13. That said motion picture "La Ronde" has been re-edited and is available for exhibition at the present time to this Court, and should be viewed by this Court for the purpose of determining the rights of the Petitioner in requesting that the Board of Regents be directed to issue a license for the exhibition of said motion picture in the State of New York.

14. That the dismissal of your Petitioner's appeal by the Board of Regents of the State of New York which results in the refusal of the issuance of a license for the exhibition of said motion picture "La Ronde" is illegal, unjust, unreasonable and discriminatory, and arbitrarily deprives your Petitioner of his property without due process of law, and violates the privileges afforded it by the Constitution of the United States and of the State of New York.

15. That no previous application has been made to this or any other Court for the relief herein asked.

16. That your Petitioner has no adequate remedy at law.

[fol. 11] Wherefore, your Petitioner prays that the determination of the Board of Regents of the New York State Education Department in refusing to grant a license for the exhibition of the motion picture "La Ronde" hereinbefore mentioned be reviewed by this Court and that the same be annulled and that the Respondent above named be directed to issue such license to your Petitioner and that your Petitioner have such other and further relief as to the Court may seem just and proper.

Dated: Oct. 26th, 1951.

Gaston Hakim, Commercial Pictures Corporation, by Gaston Hakim, Managing Directors of Sales, Petitioner.

(Verified by Gaston Hakim, October 26, 1951.)

[fol. 12] EXHIBIT A TO PETITION

No. 5574

THE UNIVERSITY OF THE STATE OF NEW YORK

In the Matter of the Appeal from the Action of the Director of the Motion Picture Division in refusing to license for general exhibition a motion picture entitled:

"LA RONDE" (Revised)

This is an appeal by Robert Hakim from the refusal of the Director of the Motion Picture Division to license for general exhibition within the State of New York the motion picture entitled "La Ronde" on the ground that such motion picture is "immoral" and "would tend to corrupt morals" within the meaning of section 122 of the Education Law of this State.

The picture presents a chain of loosely related sequences, each dealing with the amorous adventures of various characters, one partner in each escapade becoming a principal in the next. Promiscuity is the central theme and although the actual consummation of the amorous adventures is in no instance presented on the screen, the conclusion is inescapable. Prostitution and sex indulgence is the end result. In our opinion, the presentation of such a film in motion picture theatres in this State is "immoral" and [fol. 13] "would tend to corrupt morals" within the meaning of section 122 of the Education Law.

The appeal is dismissed.

In witness whereof, we, a duly constituted Committee of the Board of Regents, appointed pursuant to the provisions of Section 124 of the Education Law of the State of New York, do hereunto set our hands and affix the seal of the University of the State of New York, at the City of Albany, this 25th day of May, 1951.

Kingsland Macy, John J. Brosnan, Jacob L. Holtzmann, Committee of the Board of Regents. (Seal.)

EXHIBIT "B" to petition



CINEMA

Sex & the Censor

For weeks, moviegoers in Washington, D.C. and Los Angeles have been crowding to see *La Ronde*, a French film that took prizes in three European film festivals. Like moviegoers in London, where the picture is flourishing in its sixth month, they seem to like what they see: an audacious, worldly-wise comedy of sex. In both U.S. cities, the film drew cheers from the critics—and not a murmur of protest from any guardian of the public morals. But last week wicked old New York, which almost always gets first crack



THE COUNT & THE STREETWALKER
A wry ode to love.

at a foreign movie, had still not seen *La Ronde*, and could not, by bureaucratic decree. The state censors, who burned their fingers this year on Roberto Rossellini's *The Miracle* (TIME, Jan. 8), refused to pass *La Ronde* on the ground that it would tend to corrupt the morals of its audiences.

Whether or not it can corrupt anyone's morals, *La Ronde* (Commercial Pictures) is clearly suitable for grownups and almost as certain to delight them. Based on Arthur Schnitzler's *Reigen*, it takes an intimate, cynical view of the mating instinct at play in a Vienna that was turning the century without a break in its giddy stride. Director Max (*Letter to an Unknown Woman*) Ophuls has lovingly put together this wry ode to love, and brightened it with a galaxy of Continental stars: Anton Walbrook, Danielle Darrieux, Fernand Gravet, Simone Simon, Gérard Philipe, Simone Signoret, Isa Miranda, Jean-Louis Barrault, Odette Joyeux.

The "round" of the title is a roundelay of love in ten episodes; after each amorous intrigue, one of the lovers moves, in the next episode, into the arms of a new partner, who flits in turn to another lover until the ironic game comes full circle. Through the cycle runs a delightful Oscar Straus waltz, signaling each consummation, helping to set a gaudily Viennese mood, and accompanying a refrain sung and spoken by Narrator Walbrook. The narrator spins a symbolic merry-go-round and manages the characters like a master puppeteer, pops up in each episode as a waiter, doorman or passerby and once, prophetically, with shears in one hand and film in the other, as the censor.

The film's characters run the social gamut from the count to the streetwalker, but stick to the same single track. The episodes vary in length, mood and quality. The longest and best, strung together midway in the film, shine with a brilliance that the rest of the movie cannot match. These catch the essence of three classic situations: the willing maid (Simone Simon) and the nervously eager master (Daniel Gelin); the master and the other man's wife (Danielle Darrieux) who wants to be coaxed into infidelity; the faithless wife inciting and lulling the suspicion of her sanctimonious husband (Fernand Gravet).

But *La Ronde* is all of a piece, as any round should be, setting up a mocking harmony of desire and disillusion, vanity, pleasure and deceit. It is never prurient, smirking or pornographic. For all the intimacy of its nuances, the film's approach is dryly detached and completely charming; it spoofs sex rather than exploits it, much as Britain's satiric *Kind Hearts and Coronets* makes sport of murder.

The New Pictures

Mr. Imperium (M-G-M). Ezio (*South Pacific*) Pinza's first movie, was shelved until his second, *Strictly Dishonorable*, could introduce him to the screen (TIME, July 23). Now moviegoers can see why. The film shackles Pinza and Lana Turner to the story of an incognito King's fling with a nightclub cutie from the U.S.—a situation enfeebled by long service in Ruritanian farce and operetta. Basso Pinza sings three numbers predictably well; Actress Turner sings a couple predictably. But only the Technicolor looks good in *Mr. Imperium*.

The Magic Face (Columbia) will come as news to Allied veterans who still think they liberated Europe in World War II by defeating the Germans. The real cause of Germany's defeat, it now appears, is that Hitler wasn't Hitler any more; he was really Janus the Great (Luther Adler), a professional impersonator bent on destroying the Reich by making all the wrong military decisions.

As the movie has it, Hitler erred not in war but only in love, when he moved in on Adler's blonde wife (Patricia Knight) and conveniently committed Adler to prison. Hitler failed to reckon with a vengeful

TIME, OCTOBER 22, 1951

[fol. 16] London, The Daily Mail, Friday, April 27, 1951

Civilised Comedy

The subtlest, prettiest, and most civilised of the three comedies happens to be the French one, La Ronde (Curzon) —a film so wickedly witty, so visually enchanting, that to attempt to describe it is to find oneself in the relationship of bull to china shop.

In one cynical lesson and nine easy seductions it makes the point that the pattern of love always repeats itself. There must always be a conquerer and a conquered, and next time the conquered becomes the conqueror.

The point is illustrated by a sort of game of amorous consequences in Vienna 1900. The streetwalker seduces the soldier who seduces the housemaid who captures the son of the house who . . . until the chain is completed when the original soldier strides masterfully towards the apartment of the streetwalker.

Such a theme could be ruptured by a single indelicacy, and you must take my word for it that no error is committed.

Perfectly handled by Max Ophuls, it floats like a cloud of ping-pong balls on slender jets of champagne, the jets being provided by ten stars: Anton Walbrook, Simone Signoret, Serge Reggiani, Daniel Gelin, Danielle Darrieux, Fernand Gravet, Odette Joyeux, Jean-Louis Barrault, Isa Miranda, Gerard Philipe.

[fol. 17] The New York Times, Sunday, October 7, 1951

Screen

The Local Scene

"La Ronde" Banned Here While Screened in Other Cities —Of Finlay Currie

By A. H. Weiler

Film circles hereabouts are buzzing about the anomalous position in which one of France's notable pictures has been placed. The picture in question is "La Ronde", an all-star episodic version of Arthur Schnitzler's "Reigen," directed by Max Ophuls. Since its completion in 1950 it has been shown on the Continent, in England, South America and in

Washington and Los Angeles. However, it has been refused a license by New York State censors on the statutory ground that it would tend to corrupt the morals of moviegoers. Although Dr. Hugh M. Flick, director of the Division of Motion Pictures of the State Education Bureau, has had "no indication of an appeal," Gaston Hakim, sales manager of Commercial Pictures, distributors of the import, said last week that his company intended to "appeal very soon because public opinion in both Washington and Los Angeles seemed to support us."

"La Ronde," he elaborated, "is now in its tenth week at the Plaza Theatre in Washington and opened at that Beverly Canon in Hollywood on Sept. 20. In both cities we have been doing capacity business, with no adverse comments." [fol. 18] To point up the irony of the situation, Mr. Hakim added that "people have been queueing up for months at the Curzon Theatre in London, it did exceptional business in the Prado Theatre in Mexico City and it has been shown in Switzerland, Belgium, Argentina and other countries."

"La Ronde," to be specific, is a droll delination of various aspects of l'amour in the Vienna of 1900. Among the stellar cast are Anton Walbrook (who appears as the commentator on the cycle of stories enacted), Danielle Darrieux, Fernand Gravey, Simone Simon, Gerrard Philipe, Isa Miranda, Simone Signoret, Jean-Louis Barrault, and Odette Joyeux.

(Here follow 4 photos, folios 19, 19a, 19b, 19c)

★ Film review

'La Ronde'

By EZRA GOODMAN

Here is a lovely motion picture, a gay, a glad, a sad, a sentimental movie. It is called "La Ronde," and it is housed at the Beverly Canon theater where it will undoubtedly be delighting many a moviegoer for months to come.

It is a French film about Vienna at the turn of the century, the Vienna of candlelight and carriages, of wine, women and waltzes. And "La Ronde" is a waltz, about love, the round of love.

It is told in a series of intertwined episodes in which a street girl (Simone Signoret) loves a soldier (Serge Reggiani) and the soldier in turn loves a lush little servant girl (Simone Simon), who loves her master's son (Daniel Gelin), who loves a married woman (Danielle Darrieux) whose rather stolid husband loves a naive model (Odette Joyeux), while the model loves a poet (Jean-Louis Barrault), who loves a worldly actress (Isa Miranda), who loves a count (Gerard Philippe), who, in turn, loves the street girl with whom this ring-around-the-romance began.



... is, but she's kissing the Blarney ... as to her unique position in "The ... ng today at the Vagabond theater.

All this is told with a combination of irony, candor and gentleness that makes of the whole a total gem of a motion picture. The film is based on Arthur Schnitzler's play "Reigen," as adapted to the screen by Max Ophuls and Jacques Natanson, and it has been directed with exquisite taste by Ophuls, who in the '30s directed a very fine film, "Liebelei," from another Schnitzler work.

The distinguished cast is flawless with Gerard Philippe, as the handsome young count, giving a particularly memorable performance. Gracefully holding together this episodic chain of events is Anton Walbrook as the sophisticated narrator, who also pops up amusingly from time to time in various sequences in one role or another. Oscar Strauss' haunting waltz, "La Ronde de L'Amour," is the recurring musical motif of the movie.

This is a picture about illicit love, but it is told without prudishness and with a deftness, discretion and understanding that make it more moral than most censor-shackled pictures on the subject.

"La Ronde" has wit. It also has melancholy. And above all it has honesty and artistry. You will be depriving yourself of a rare motion picture experience if you miss it.

Newsweek

TAXES: WHAT YOU WILL PAY

OCTOBER 22, 1951 20c



Princess Elizabeth and Prince Philip of Canada

New Films

The Lavender Hill Mob (Universal-International) is another of those relaxed, delightful whimsies which the British seem to be able to compound out of a slightly off-beat idea, a true eye for character, and a liberal lacing of the national humor. Lavender Hill is actually a respectable street leading off Clapham Junction in the London suburbs. The Mob is something else again, being composed exclusively of Alec Guinness and Stanley Holloway—probably two of the most ineffectual-looking master minds who ever attempted to bilk their government of a million dollars in gold bullion.

Mr. Holland (Guinness) is a mousy, bespectacled bank clerk whose job it has been for twenty years to tick off shipments of bullion at the refinery and check it in at the Bank of England. Although his appearance is against it, Mr. Holland cherishes the notion of living a life of sybaritic ease in a more indulgent climate, and with this in mind he patiently perfects a foolproof plan to highjack a truckload of the crude necessary.

But once the clerk has the gold safely tucked away on Lavender Hill, he is faced with the problem of getting it out of the country. That is where Mr. Pendlebury fits in. Mr. Pendlebury (Holloway) is a benevolent, moon-faced manufacturer of souvenir knick-knacks ("I cultivate British cultural depravity") who comes to live at Mr. Holland's boarding house. Shortly the two innocents find themselves melting the ingots into Eiffel Tower paperweights for export to France.

Bubbling with success, the partners follow their first shipment to Paris and find that by mistake six of the precious towers have been sold to a giggling band of English schoolgirls who are bound for home. T.E.B. Clarke's screenplay brings the smugglers back for a hilarious sequence among the dummies of a British Police Exhibit, where they outwit a few hundred assembled bobbies, and for an improbable automobile chase that sounds the only orthodox note in the film.

Director Charles Crichton is fortunate in his two leading players. Holloway is one of England's most ingratiating character comedians, and Guinness (who never seems to look the same twice in successive films, even when he plays eight roles, as in "Kind Hearts and Coronets") is slyly and triumphantly Caspar Milquetoast's dream of criminal glory.

La Ronde (Commercial Pictures) has been banned on moral grounds by New York State's censors, but has already won several European awards and done a brisk business in, among other places, London, Mexico City, and Washington, D.C. It is a subtle, lovely, and frequently uproarious French version of the late Viennese playwright Arthur Schnitzler's famous "Reigen" ("Hands Around"), which has a long history of difficulty with censors both official and self-appointed. The film is brilliantly directed by Max Ophuls and studded with French stars including Simone Simon and Danielle Darrieux—masculine honors going to Daniel Gelin and Fernand Gravey.

The knotty point which has always faced the censors of Schnitzler's drama is the fact that it is remorselessly, unmistakably and almost solely concerned with sex. It is also true that the subject has seldom been handled with as much wit, warmth, and delicacy. Schnitzler's "story" is simply an endless chain of amorous episodes linking, in order, a street girl, soldier, serving maid, student, gentlewoman, husband, model, poet, actress, count, and so around to the streetwalker again. This scheme might seem to make monotony obligatory, but Schnitzler's acute sense of human variety and his gift for lighting it with glinting detail result in a *tour de force* of tender and ironic drama.

The play is full of observations made in the deftest theatrical terms—on the marriage bed, on the erotic difficulties involved in wearing a sword, on the trepidation of youth in the boudoir, on the nuisance of champagne corks which break off at inopportune moments, on the frustration of a lady who asks about a place of rendezvous: "Have other women come here?" Her devoted student replies: "This house was built fifty years ago." Presiding over the couples is a benignant ringmaster (Anton Walbrook) equipped with a symbolic merry-go-round which, in one of the funniest moments of the picture, suffers a marvelously symbolic breakdown.

Max Ophuls has kept his actors in charming Viennese half-lights, both indoors and out; there is a lingering waltz theme by Oscar ("The Chocolate Soldier") Straus, and Arthur Schnitzler was always a man to see and delicately insist that light loves may sometimes carry weighty overtones.

Mr. Imperium (M-G-M). Hollywood has not done right by Ezio Pinza. M-G-M has taken the basso who has scored triumphs in three mediums—opera, the stage, and now TV—and handed him a vehicle all dressed up with Technicolor, a plump Lana Turner, and not much else.

It is small wonder that the studio first released the Pinza-Janet Leigh starrer, "Strictly Dishonorable," which was made six months after "Mr. Imperium" (Newsweek, July 23). The relatively unpretentious Preston Sturges story served as a better introduction to Pinza in pictures and did offer the singer something more substantial than popular songs to sing. "Imperium," on the other hand, has an air of importance not warranted by the silly script or by the songs. In it Pinza is forced to masquerade as a European crown prince who falls in love with a cowboy-ballad singer (Miss Turner), leaves her when he ascends to the throne, and then returns twelve years later when she is a Hollywood star. At Palm Springs, the trysting spot, he discards what little dignity the scenarists have left him as he dons a cowboy outfit and struts around the desert in boots.



Protective coloration: Guinness joins the dummies at a police exhibit

MOVIES

109

PEOPLE IN MOVIES

THE FRENCH MOVIE FORBIDDEN TO AMERICANS

California and the District of Columbia, hardly noted as cultural centers, have seen the greatest dissertation on love ever filmed. It's a star-studded French movie, *La Ronde*. But for approximately 100 million Americans, chances of seeing this cinema masterpiece are slim. Censors won't let them.

Said the U.S. Customs reviewer (who would have barred the film if it were "obscene, immoral or seditious"): "Very well done." Said the motion picture director of the N.Y. Board of Education, finding it his duty to refuse a license: "Extraordinary, a fine picture,



IN MUCH OF U. S., *LA RONDE* HAS BEEN QUIETLY SUPPRESSED

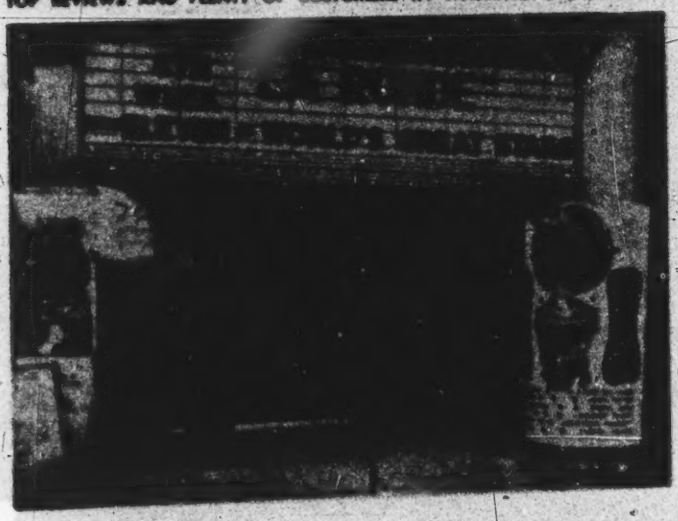
no question about it, but I'm bound hand and foot by bureaucracy."

The ban was upheld by the N.Y. Board of Regents in Albany. Said one of the board's lawyers: "I guess I'll have to go to Washington to see it."

La Ronde's characters make love and talk about it. There are 10 scenes, based on dialogs by Viennese playwright Arthur Schnitzler titled *Reigen* (a dance in a circle). The affairs are between a streetwalker and a soldier; the soldier and a maid (Simone Simon); the maid and a bachelor; the bachelor and a married woman (Danielle Darrieux); the married woman and her husband; the husband and a young girl (Odette Joyeux); the young girl and a poet (Jean-Louis Barrault); the poet and an actress (Isa Miranda); the actress and a count (Gerard Philipe). And the circle is closed when the count meets the streetwalker.

Subtly directed by Max Ophuls (who flopped twice in Hollywood), *La Ronde* is in impeccable taste throughout, was a smash success in Paris and London, won

TOP REVIEWS AND PLENTY OF CUSTOMERS IN WASHINGTON, D. C.



La Ronde—OK for L. A., Too Hot for N. Y.?

Hills' Canon Theatre. No church or women's groups protested. The theatre expects at least a year's run.

La Ronde is the most striking case of a civilized film kept from mature Americans by slapdash censorship (*see box, opp. page*). Although intelligent and tasteful films like *La Ronde* are banned, Hollywood's "self-policing" Johnston office approved scene *below*.

OKAYED BY CENSORS: ROMAN ORGY IN MGM'S QUO VADIS?



[fol. 20] Los Angeles Times 2 *

Friday, Sept. 21, 1951—Part III

'La Ronde' Memorable

Daring French Cinema

By Philip K. Scheuer

When Americans speak of romance, they have quite a different concept of it than Europeans. "La Ronde," the extraordinary new French film at the Beverly Canon, proves this all over again. "La Ronde"—which may be translated as "merry-go-round" or simply "round"—treats of romance, and Viennese romance at that, with wit and a cynicism which is a mixture of disdain and pity, and its gaiety is flecked with melancholy.

The difference seems to be that the French (and the Viennese) think of love as sex and of sex as already a fait accompli, while with us it lies in the future as something still to be attained. The passion is but a means to an end; with the passion spent, it is possible to discuss its causes as dispassionately as its effect. And each lover is really alone.

Austrian Sources

So must have reasoned Arthur Schnitzler, whose "Reigen" this is—the Viennese play as a French cinema. Anton Walbrook, the first actor we meet, speaks for the author but says he represents "you," meaning us, because with him we are able to see all, know all. This statement comes close to being the truth!

Walbrook, a kind of combined narrator and m.c., appears as a liaison officer between the parties to nine romances, [fol. 21] each separate yet linked, beginning with a street girl and a soldier and ending with the street girl and the soldier's superior officer, a count. The details are concrete enough to make one blush unseen yet abstract enough to rise above the purely pornographic, which they are.

Sameness Skirted

The skilled quality of the performances, the gradations in thinking and feeling subtly expressed by these practiced

men and women of another art, that of the theatre—these keep the film from falling into what might easily have become a monotony of scene if not theme. And at moments it takes all they've got to prevent it.

The players are as follows: the street girl, Simone Signoret; the soldier, Serge Reggiani; the maid, Simone Simon; the young man, Daniel Gelin; the lady, Danielle Darrieux; the husband, Fernand Gravet (or Gravey); the little cocotte, Odette Joyeux; the poet, Jean-Louis Barrault; the actress, Isa Miranda, and the count, Gerard Philipe. They are among the cream of French talent, and virtually flawless here.

To Waltz Time

Director and coadapter is Max Ophuls (or Opuls, as he was known in Hollywood), who balances light and shadow as sensitively as he does the humor and pathos of Walbrook's "puppets." An Oscar Strauss waltz is never far below the level of audible sound and to it turns "the merry-go-round of love."

"La Ronde" is in the tradition of "Devil in the Flesh"—daring and memorable.

[fol. 22] The Evening Star, Washington, D. C.

Saturday, July 28, 1951

The Passing Show

'La Ronde' Is Very French In Its Study of Amour

By Jay Carmody

"La Ronde," a French film, produced and directed by Max Ophuls, from the play "Reigen" by Arthur Schnitzler, screen adaptation by Jacques Nathanson. At the Plaza.

The Cast

Master of Ceremonies	Anton Wallbrook
The Girl	Simone Signoret
The Servant Girl	Simone Simon
The Married Woman	Danielle Darrieux
The Dressmaker	Odette Joyeux
The Actress	Isa Miranda

The Soldier ..... Serge Reggiani
The Young Man ..... Daniel Gelin
The Husband ..... Fernand Gravey
The Poet ..... Jean-Louis Barrault
The Count ..... Gerard Phillipe

Something like the full artistic resources of the French cinema have gone into the making of "La Ronde," a saga of amour, which opened yesterday at the Plaza Theater.

The 10 players, five males and five females, represent the cream of France's romantic actors and they manifest a thorough understanding of just what is expected of them by Director Max Ophuls, a kind of poetic Dr. Kinsey.

[fol. 23] "La Ronde" thus is heralded as a distinguished screen exhibit and there is no doubt that this is a reasonable claim. Certainly no one else has, or is likely to produce a film distinguished by so much reflection upon mankind's recreative passion. This distinction, among several others, earned it film festival prizes last year at Venice, Cannes and Brussels, indicating that the sophisticated judges in these centers of culture concur with Director Ophuls.

As a Hollywood director several years ago, Ophuls resigned to go home in a dudgeon because he could not express his artistic self here. "La Ronde" makes it clear that his freedom is not restricted in France. With something less than tremulous delicacy, he and his associate artists, speak quite freely upon the joys and woes of amorous adventure.

* * * * * * *

Arthur Schnitzler's "Reigen" provides the story basis for Ophuls' five-inning game of rounders, or how 10 humans get involved in the same overlap of emotions.

Actually, it is the same story told with as many variations as there are characters involved. This could become both too repetitious and involved but Ophuls anticipated that this might happen to merely mortal spectators in movie houses. Accordingly, he has made use of the services of Anton Walbrook as narrator—to prevent too much confusion. Wallbrook, of course, speaks French but English subtitles make quite clear what he is saying and what the all-star cast members are up to.

[fol. 24] As illustrated lectures go, "La Ronde" is a masterpiece of eloquent simplicity.

• • • • • • •

The fact that it is about love, in French, and involves so many top-flight Parisian stars, assures "La Ronde" an unwavering quality of attention.

The romantic experience of most humans is limited and the fact that Schnitzler's famous 10 could become involved in such an emotional crisscross is inescapably interesting. As the facts of life go in this airy area of the Western hemisphere, only prostitutes and soldiers are likely to know about how it is to be a prostitute or a soldier. The same is true of sons of aristocratic households financially able to employ attractive maids such as Simone Simon.

One knows very little of how it is emotionally with these and Ophul's film is careful to explain.

Also, it goes on from here to tell the story of a pretty housewife (Danielle Darrieux) who finds herself romantically involved with the same callow lad who had the affair with the maid; or her philosophic husband who found himself entangled with a young dressmaker; of a poet involved with the same dressmaker and a great actress; and a Count whose life twists into the actress' dressing room and ends up—if you are still there—with the girl the audience first met with the soldier.

Any one who can follow all this without a scorecard, and the players' numbers, has a most unusual mind. (Frankly, this reviewer used a reference in the form of a Schnitzler synopsis).

• • • • • • •

[fol. 25] It is not in the hearts of those who have made "La Ronde" to pass mortal judgments upon their actions. They are too busy with the external aspects to bother with the inner essence of romance. Naturally, the moods of the various episodes of the romantic round-up represent considerable dramatic contrast, the best of which each Plaza customer will want to choose for himself.

Of the five actresses involved, this department's choice is Miss Darrieux. As the housewife who dallies with the

callow young man and later listens to her husband philosophize on the virtues of wifely fidelity, she commands the film's most comic moment.

The others are equally talented, no doubt, in their various assignments. To sum them up, score-cardwise, they include Miss Simon, Simone Signoret, Odette Joyeux, and Isa Miranda while the male team includes Serge Reggiani, Daniel Gelin, Fernand Gravey, Jean-Louis Barrault, and Gerard Phillipe.

They are all such very French actors in such a very French film.

• • • • • • •

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"La Ronde"

From Arthur Schnitzler's Play

Music by OSCAR STRAUSS

AWARDED FIRST PRIZE VENICE-CANNES-BRUSSELS FILM FESTIVALS

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(18)



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A MAX OPHULS PRODUCTION

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DANIELLE DARRIEUX • ODETTE JOYEAUX • ISA MIRANDA • SERGE REGGIANI
DANIEL GELIN • FERNAND GRAVEY • JEAN-LOUIS BARRAULT • GERARD PHILIPE



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VENICE—CANNES—BRUSSELS
FILM FESTIVALS

Arthur Schnitzler's

La Ronde

Starring
ANTON WALLBROOK
SIMONE SIGNORET — SERGE REGGIANI
SIMONE SIMON — DANIEL GELIN
DANIELLE DARRIEUX — FERNAND GRAVEY
ODETTE JOYEUX — JEAN-LOUIS BARRAULT
ISA MIRANDA — GERARD PHILIPE

Music by OSCAR STRAUSS

"It is no worldly use, in guarded admiration, I am forced back to that old cliche. Only the French could have done it."
LONDON DAILY EXPRESS

PREMIERE—FRIDAY
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PREMIERE TOMORROW

One of the Greatest Films Ever Made!



Arthur Schnitzler's famous play

La Ronde

with the greatest cast ever assembled in one motion picture

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SIMONE SIGNORET	SERGE REGGIANI
SIMONE SIMON	DANIEL GELIN
DANIELLE DARRIEUX	FERNAND GRAVEY
ODETTE JOYEUX	JEAN-LOUIS BARRAULT
ISA MIRANDA	GERARD PHILIPE

Music by
OSCAR STRAUSS

Roth's PLAZA
NEW YORK AVE. AT 14TH ST.

"La Ronde"
STARTS FRIDAY
Roth's PLAZA
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Premiere Friday

One of the greatest motion pictures of this civilized age.

MAX OPHULS' DISTINGUISHED PRODUCTION
of Arthur Schnitzler's famous play

La Ronde

starring

ANTON WALLBROOK

SIMONE SIGNORET	SERGE REGGIANI
SIMONE SIMON	DANIEL GELIN
DANIELLE DARRIEUX	FERNAND GRAVEY
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Music by OSCAR STRAUSS

"The actors create a scintillating, sophisticated comedy that arouses the same kind of enchanted exhilaration as a verse-play by Christopher Fry."
LADY MAGAZINE—LONDON

Roth's PLAZA Theatre · New York Ave. at 14th St.

Announcement

On Friday, July 27th, Roth's PLAZA Theatre will have the distinguished honor to present the subtlest, most beautiful, most civilized motion picture ever produced—

MAX OPHULS' PRODUCTION
of Arthur Schnitzler's

La Ronde

with the greatest cast ever assembled in one motion picture

ANTON WALLBROOK

SIMONE SIGNORET	SERGE REGGIANI
SIMONE SIMON	DANIEL GELIN
DANIELLE DARRIEUX	FERNAND GRAVEY
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Music by
OSCAR STRAUSS

"A film so wickedly witty, so visually enchanting that to attempt to describe it is to find oneself on the relationship of bull to china shop."
LONDON DAILY MAIL

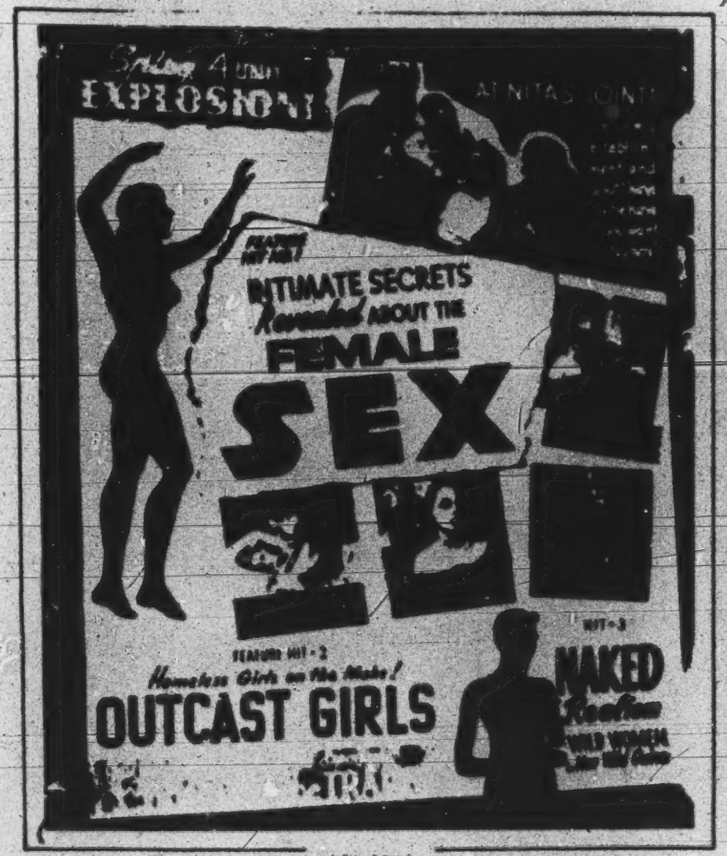
Roth's PLAZA Theatre—New York Ave. at 14th St.

EXHIBIT "D" to petition

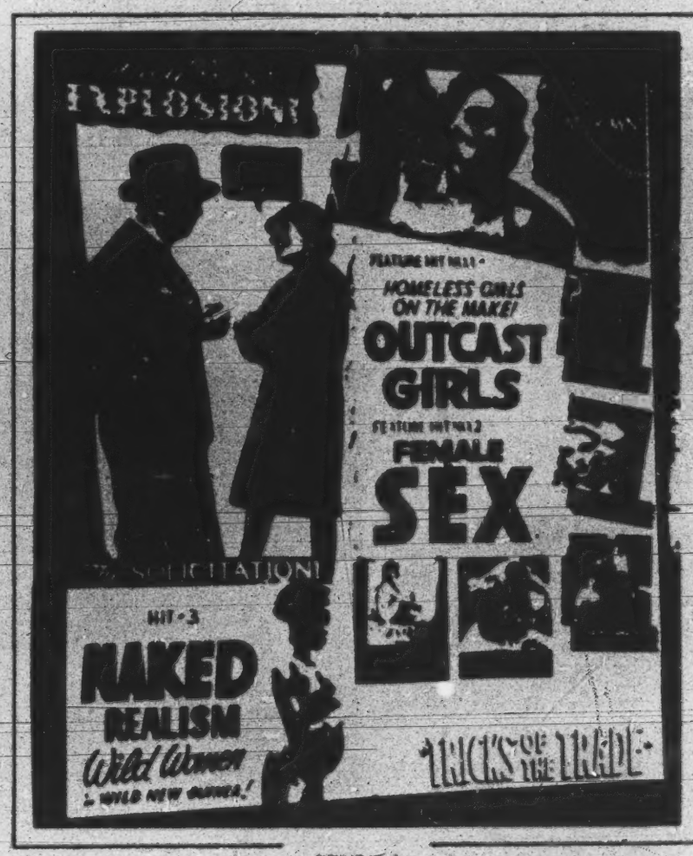
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[fol. 30] Exhibit #1

The Motion Picture "La Ronde".

Application will be made at the opening of the May Term for permission to have this Court review the picture.

In Supreme Court of New York, County of Albany
Affidavit of Gaston Hakim, Read in Support of Motion

Gaston Hakim, being duly sworn deposes and says:

I am the Managing Director of Sales of Commercial Pictures Corporation, the Petitioner herein. Said Corporation has the sole distribution rights for the motion picture "La Ronde" in the United States of America. As such officer, I have been in constant contact with the exhibitors of the motion picture and I am familiar with the reaction of the various critics throughout the United States who have seen "La Ronde".

I might also further add that I am well aware of vice problems and immoral characteristics which have been attributed to "La Ronde" by the Board of Regents, because [fol. 31] during World War II I was in the United States Army in the Criminal Investigating Division investigating vice, and as such served one and a half years, so becoming fully aware of the problems.

It is unfortunate that the sovereign State of New York which has been proclaimed as a leader in education and progressive thinking should itself, through its Board of Regents, be so backward as to refuse a license to "La Ronde" a motion picture whose artistic merit, subtlety, humor and fine characteristics have been so maligned by this refusal. The decision of the Board of Regents has incorporated therein the following: "Promiscuity is the central theme and although the actual consummation of the amorous adventures is in no instance presented on the screen, the conclusion is inescapable". If by this sentence the Board of Regents infers that sexual acts take place, I might conclude that all human beings including the Board of Regents are a result of a sexual act.

It may very well be that the Regents who are the guardians of the morals of the people of the State of New York

are not as capable of determining artistic merit as distinguished from pornographic, prurient or indecent motion pictures. Attached hereto and marked "Exhibit B" are a group of critiques by the premier critics of the world. These criticisms are attached in said Exhibit B in their entirety. To highlight the thinking of the critics, however, I have excerpted various statements from these experts who are in constant touch with public and its moral reactions as concerns motion pictures. Let me cite, for example:

[fol. 32] Time Magazine, which says:

> "It is never prurient, smirking or pornographic. For all the intimacy of its nuances, the film's approach is dryly detached and completely charming; it spoofs sex rather than exploits it, much as Britain's satiric 'Kind Hearts and Coronets' makes sport of murder."

The Daily Mail—London, which says:

> "Such a theme could be ruptured by a single indelicacy, and you must take my word for it that no error is committed."

New York Times, A. H. Weiler says:

> "'La Ronde' to be specific, is a droll delineation of various aspects of l'amour in the Vienna of 1900."

Los Angeles Daily News, Ezra Goodman says:

> "This is a picture about illicit love, but it is told without prudishness and with a deftness, discretion and understanding that make it more moral than most censor-shackled pictures on the subject."

News Week, which says:

> "It is also true that the subject has seldom been handled with as much wit, warmth, and delicacy."

People Today, which says:

> "La Ronde is the most striking case of a civilized film kept from mature Americans by slapdash censorship (see box, opp. page)."

[fol. 33] Los Angeles Times, Philip K. Scheuer says:

> "The details are concrete enough to make one blush unseen yet abstract enough to rise above the purely pornographic, which they never are."

The Evening Star, Washington, D. C., Jay Carmody, says:

> "La Ronde thus is heralded as a distinguished screen exhibit and there is no doubt that this is a reasonable claim. Certainly no one else has, or is likely to produce a film distinguished by so much reflection upon mankind's recreative passion."

It is true that this picture has sex and its relations to various people in many walks of life as its theme, yet the humor, fantasy and spoofing of sex is itself the highlight of the picture. Nowhere in the motion picture is there an attempt to be lewd or pornographic, but the entire theme of the picture is the behavior of various individuals where sex is concerned.

In this modern day and age in a state whose educational and moral standards are as high as that of the State of New York, is it well that the Empire State should be held in ridicule throughout the educated world because of abusive censorship in an attempt to hide from the fact that there are two sexes who inevitably must procreate for the continuance of the world?

The Hakim brothers, of which I am one, have been in the motion picture field for many years and have made artistic films, which pictures have been humorous, satirical and [fol. 34] subtle, and have been unanimously accepted by the world as meritorious.

I might also state that the very advertisements which we have placed in newspapers and other periodicals attached hereto as "Exhibit C", are themselves the best evidence that the Hakim brothers do not exploit sex but only the merit of their product. We have sought no publicity on the sexual implications that *may* be read into this picture because we honestly do not believe that the picture inordinately displays sex or stresses pornography. On the contrary, we firmly believe that "La Ronde" is simply a com-

edy in which sex is a feature out of which many humorous and satirical situations evolve.

Attached to Exhibit C is an advertisement which coincidentally appeared parallel to that of "La Ronde" for a picture called "A Streetcar Named Desire". This advertisement of this picture which may or may not have artistic merit, shows a clear exploitation of sex as distinguished from the subdued advertisements placed by your Petitioner for "La Ronde". Also attached as "Exhibit D" is an advertisement of motion pictures which are permitted for exhibition in the State of New York and are exploited as sexual displays, while a license is unjustly refused for the exhibition of "La Ronde".

Your Petitioner seeks the aid of this Court in defining a grown-up policy of censorship which will serve to protect the people of the State of New York without bringing back the bustle, high-button shoes, the stiff celluloid collars and hairnets.

[fol. 35] Switzerland, Italy, England, France, the District of Columbia, California have all exhibited this picture and have found it *not* to be indecent, *not* to be immoral, *not* to be a corrupting influence to motion picture viewers, but to the contrary a brilliant piece of film craft. This picture is not offensive, such as "The Miracle" which was recently banned because it was sacrilegious.

I sincerely ask that this Court view the picture and I am ready to produce it for a showing at any time. I also sincerely believe that the petition herein should be granted and a license issued for the showing of "La Ronde" in the State of New York.

Gaston Hakim.

(Sworn to be Gaston Hakim, October 26, 1951.)

Answer

In the Supreme Court of New York, County of Albany

The respondents, by their attorney Charles A. Brind, Jr., answering the petition of the petitioner herein respectfully allege:

First. Upon information and belief admit each and every allegation contained in the paragraphs of the petition num-
[fol. 36] bered "1", "2", "3", "4", "5" and "6".

Second. Upon information and belief deny each and every allegation contained in paragraphs of the petition numbered "7" and "14".

Third. Deny any knowledge or information thereof sufficient to form a belief as to the allegations contained in the paragraphs of the petition marked "8", "10", "12", "15" and "16".

Fourth. Upon information and belief deny each and every allegation contained in paragraph numbered "9", except that part thereof that respondents admit that petitioner has annexed to his petition alleged reviews of the motion picture "La Ronde" from Time Magazine, News Week, Washington D. C. Evening Star, Washington Post, Daily News, Los Angeles Times, Los Angeles Daily News, and this allegation the respondents admit.

Fifth. Upon information and belief deny each and every allegation contained in paragraph "11" of the petition, except so much thereof that alleges that the petitioner has annexed to his petition certain advertisements of the motion picture, "La Ronde", and this allegation respondents admit.

Sixth. Upon information and belief deny each and every allegation contained in the petition heretofore not specifically admitted or denied.

Seventh. In connection with allegations contained in paragraph numbered "13" of the petition, respondents have
[fol. 37] no objection to the exhibition to the Court of the picture which was reviewed by the respondents if the Court sees fit to review said picture. If petitioner is referring to a re-edited picture in the sense that changes have now been made in the picture since the respondents have viewed the

picture, respondents must insist that the picture is not properly before the Court.

Eighth. Returned herewith and made a part thereof are the following exhibits:

Exhibit 1

Petition, dated April 16, 1951, addressed to the Board of Regents in the Matter of the Appeal of Robert Hakim from the action of the Director of the Motion Picture Division in denying the license for the motion picture entitled "La Ronde".

Exhibit 2

The answer of Hugh M. Flick, Director of the Motion Picture Division of the State Education Department, to the petition, dated April 20, 1951, addressed to the Regents.

Exhibit 3

The report of the Special Committee of the Board of Regents, dated May 25, 1951.

Exhibit 4

Vote of the Board of Regents on the afore-mentioned appeal, at a meeting held on May 25, 1951.

[fol. 38] OBJECTIONS IN POINT OF LAW

The respondents herein hereby object in point of law to the petition upon the following ground:

1. The petition herein does not state facts sufficient to constitute a cause of action.

Wherefore, respondents pray for an order dismissing the petition herein on the merits, together with costs and disbursements, and for such other and further relief which to this Court may seen just and proper.

Charles A. Brind, Jr., Attorney for Respondents.

To: Nemeroff, Jelline, Danzig & Paley, Attorneys for Petitioner.

(Verified by Lewis A. Wilson, Nov. 14, 1951).

[fol.39] EXHIBIT 1 TO ANSWER

Petition

State of New York
Education Department
Albany, New York

In the Matter of the Appeal of ROBERT HAKIM, from the Action of the Director of the Motion Picture Division in Denying a License for the Exhibition of the Motion Picture Entitled "LA RONDE"

To the Board of Regents:

After the first screening of the motion picture made in France entitled "La Ronde," I was informed by letter dated April 4th, 1951, by the Director of the Motion Picture Division that this film had been rejected from exhibition license in the State of New York on the grounds that the Board of Review had concluded that it is immoral and tends to corrupt morals, within the meaning of Article 122 of the State Education Law:

1) I feel and sincerely believe that this picture is not immoral; that it does not contain and neither was it ever intended to corrupt morals. This motion picture earned the highest acclaim for its artistic integrity and received several international awards at every film festival where it was shown.

[fol. 40] 2) Several famous actors of the French stage and screen appear in "La Ronde" who are jealous of their reputations and would never have consented to take part in a work which would jeopardize their high international standing and which did not have fine representative French endeavor as its aim.

3) It depicts several fragments of life in a light comedy vein with fantasy very objectively interwoven, and as seen through the eyes of several people, with a certain amount of philosophy and charm. It contains no elements which can be construed as an attempt to be immoral or to disturb the morals. The action takes place in 1900, and contains nothing which can be taken seriously or literally.

4) Notwithstanding my firm conviction that the picture

is one which France is justfiably proud to present to film audiences over the world, in order to satisfy the qualms of the Motion Picture Division, I painstakingly edited the picture, making considerable alterations so that there would be no doubt that it would be acceptable from the American point of *ivew*, and removed that material which may have been held objectionable by any group of people.

5) It has been playing and is currently running in London in its original form, without any objection having been raised from any quarter or authority.

The picture, "La Ronde," having been reviewed again and being notified by letter dated April 13th, 1951 that the [fol. 41] Board of Review sustains its objections on the aforesaid grounds and denies a license for its general exhibtion, I feel impelled to ask you to examine it.

Therefore, I respectfully request that you view this product before the French industry learns that one of their finest achievements in recent film production cannot be shown in New York.

April 16, 1951.

Robert Hakim.

270 Park Avenue,
New York 17, N. Y.,
April 16, 1951.

Affidavit

I hereby testify that I have sent a copy of the Petition addressed to the Board of Regents regarding an appeal in the matter of the Motion Picture "La Ronde."

Robert Hakim.

[fol. 42] EXHIBIT 2 TO ANSWER

Answer

In the Matter of the Appeal from the Action of the Director of the Motion Picture Division in Refusing to License for General Exhibition a Motion Picture Entitled: "LA RONDE" (Revised)

To the Board of Regents:

Hugh M. Flick, as Director of the Motion Picture Division, State Education Department, for answer to the appeal herein admits, denies and alleges as follows:

1. Admits the motion picture "La Ronde" (Revised) was submitted to the Motion Picture Division for review and license on April 13, 1951; that as the result of such review on April 13, 1951, it was the unanimous decision of the motion picture reviewers that this motion picture was "immoral" and would "ten- to corrupt morals" within the meaning of the governing statute. A letter stating this decision was sent to the applicant under date of April 13, 1951.

2. Admits that it may not have been the intention of those who produced the subject motion picture in France to create [fol. 43] a motion picture which would be immoral or would tend to corrupt morals but contends that when this picture is considered in the light of the generally accepted moral standards of New York State, it is "immoral" and would "tend to corrupt morals" within the meaning of Section 122, Article 3, Part II of the State Education Law.

3. Denies the relevancy of the allegation that the subject motion picture "earned the highest acclaim for its artistic integrity and received several international awards at every film festival where it was shown" since the only point in question is its relation to the governing statute in New York State.

4. Denies the relevancy of the personal attitude of the actors and actresses who appear in the motion picture since the picture must be judged in the light of the governing statute in New York State and not the controlling laws in France, England or other parts of the world.

5. Alleges that the motion picture "La Ronde" (Revised) contains among other matters the following story material.

The motion picture presents a chain of loosely related sequences, each dealing with the amorous adventures of various characters, and one partner in each escapade becoming the principal in the next. It is a series of interlocking love affairs held together by a mythical master of ceremonies. The cycle commences with an encounter between a prostitute and a soldier who is hurrying back to the barracks when he is accosted. Since the prostitute's room is [fol. 44] ten minutes' walk away and since the soldier's time is limited, they take advantage of the local environment. His initial hesitancy is overcome by her assurance that "It's civilians who pay; for the boys like you it is free." The cycle continues with the soldier and a chambermaid; the chambermaid and the son of her employers; the son and a married woman; the married woman and her husband; the husband and a girl; the girl and a poet; the poet and an actress; the actress and a count, and last of all, the count and the prostitute. The cycle is completed with the soldier saluting the count.

6. It is admitted that this motion picture might have been intended as a sophisticated comedy for public exhibition with love in its broadest sense as the central theme but it is held that the portray*ed* in a motion picture of such free and promiscuous relations is contrary to the statute governing the licensing of motion pictures in New York State.

7. It is admitted that following a conference with the applicant for the license of the original version of the subject motion picture extensive editing was voluntarily accomplished in an effort to meet the fundamental objections of the Motion Picture Division and that the subject motion picture was submitted to the Motion Picture Division as a new film. It is contended, however, that despite this extensive editing the fundamental objections were still sufficiently evident to warrant the unanimous decision of the reviewers that the motion picture was "immoral" and would "tend to corrupt morals" within the meaning of the statute. [fol. 45] This decision is concurred in by the Director of the Division. The principal objection to the film in both its original and the revised versions is that it lucidly portrays

moral standards which we deem contrary to the provisions of the laws of New York State and which we further deem would tend to corrupt morals within the meaning of the statute. Promiscuity is the central theme and although the actual consummation of the amorous adventures is in no instance presented on the screen, so deft is the acting, the commentation and the direction that the conclusion is inescapable.

Wherefore, your respondent urges that the appeal herein be dismissed and that the action of the Motion Picture Division and the Director of such Division be affirmed.

Hugh M. Flick, Director.

(Verified by Hugh M. Flick, April 20, 1951.)

[fol. 46] EXHIBITS 3 AND 4

No. 5574

THE UNIVERSITY OF THE STATE OF NEW YORK

In the Matter of the Appeal from the Action of the Director of the Motion Picture Division in Refusing to License for General Exhibition a Motion Picture Entitled: "LA RONDE" (Revised)

This is an appeal by Robert Hakim from the refusal of the Director of the Motion Picture Division to license for general exhibition within the State of New York the motion picture entitled "La Ronde" on the ground that such motion picture is "immoral" and "would tend to corrupt morals" within the meaning of section 122 of the Education Law of this State.

The picture presents a chain of loosely related sequences, each dealing with the amorous adventures of various characters, one partner in each escapade becoming a principal in the next. Promiscuity is the central theme and although the actual consummation of the amorous adventures is in no instance presented on the screen, the conclusion is inescapable. Prostitution and sex indulgence is the end result. In our opinion, the presentation of such a film in

motion picture theatres in this State is "immoral" and "would tend to corrupt morals" within the meaning of section 122 of the Education Law.

[fol. 47] The appeal is dismissed.

In witness whereof, we, a duly constituted Committee of the Board of Regents, appointed pursuant to the provisions of Section 124 of the Education Law of the State of New York, do hereunto set our hands and affix the seal of the University of the State of New York, at the City of Albany, this 25th day of May, 1951.

W. Kingsland Macy, John J. Brosnan, Jacob L. Holtzmann, Committee of the Board of Regents. (Seal.)

"La Ronde"

On or about the 13th day of April, 1951, an application made by Robert Hakim for a license to exhibit the motion picture entitled "La Ronde" (Revised) within the State of New York was denied by the Director of the Division of Motion Pictures.

Thereafter, and on or about April 16, 1951, an appeal from the action of the Director of the Division of Motion Pictures in denying such license was brought to the Board of Regents.

The said motion picture film was reviewed on May 3, 1951, by a committee of the Board of Regents, and after full discussion and consideration it was recommended that the action of the Director of the Division of Motion Pictures be sustained and that the application be denied on the grounds that the said film is "immoral" and "would tend to corrupt morals," within the meaning of section 122 of the Education Law.

Voted, That, upon the recommendation and report of the committee of this Board, the appeal herein is dismissed and the action of the committee confirmed.

[fol. 48] In Supreme Court of New York, County of Albany

Affidavit of No Opinion

State of New York,
County of New York, ss:

Bernard Schwartz, being duly sworn, deposes and says: I am an attorney at law, associated with the attorneys for the petitioner herein. That I am familiar with the proceedings herein. That no opinion was rendered by Mr. Justice MacAffer in granting the order of transfer in this proceeding, said order having been entered by consent.

Bernard Schwartz.

Sworn to before me this 21st day of April, 1952. Fay D. Einsohn, Notary Public, State of New York. Qualified in Queens Co. No. 41-1091700. Cert. filed in Queens, New York, Kings, Bronx County Clks. & Reg. Commission Expires March 30, 1953.

[fol. 49] Stipulation Waiving Certification—(omitted in printing).

[fol. 50] Note

Complete text of some reviews published since the filing of the original record in the Appellate Division are contained herein; together with references to recent awards.



The wayward wife in, "La Ronde," a French film New York's censors ban, is lovely Danielle Darrieux. The reason for the censorship here is somewhat of a mystery.



Anton Walbrook, familiar in British movies, and Simone Simon, who has made quite a few in America, have key roles in "La Ronde." Walbrook plays the narrator's part; Simone is a lady's maid.



Gerard Philipe, resplendent in the uniform of a guardsman, appears in the French comedy.

[fol. 52] This Article Appeared on Page 2, Section 2 of the New York Sunday News, April 13, 1952

Banned Comedy Is Enchanting

By Kate Cameron

When I was in Paris recently, a friend asked me what he could do to make my stay there a pleasant one. I said I'd like to see a French film called "La Ronde," as I had heard much about it before I went abroad. He immediately communicated with Robert Hakim who, through Commercial Pictures, has acquired the American import rights to the picture, and arranged a screening for me. It was no longer on exhibition in Paris, where it had been a big hit for more than two years.

The principal reason for wanting to see "La Ronde" was that the New York State Board of Censors had turned it down for exhibition in this state. I was curious to know why we were not permitted to look at a film that had run for nearly two years in Paris, has been running for over a year in London and was voted the best film from any source by the British Academy. It had half a year's run in Los Angeles and has been showing in San Francisco for the last six months and is still going strong there. It ran four and a half months in Washington, D. C., five weeks in St. Louis and three weeks in three theatres in Detroit.

Lenient With Others

The New York State Board has not been too squeamish in the past, as the members have given permits for exhibi- [fol. 53] tion to such films as Rosselini's "The Miracle," which offended many Americans who considered the context blasphemous. It put the state seal on the French film, "The Scandals of Clochemerle," which was not only offensive to many people here but was a libel on French citizens; and the board freely admitted the British production of "Kind Hearts and Coronets" to be shown on local screens, even though the latter film dealt in a light-handed manner with the subject of murder and gain.

I mention the British picture, which I found delightfully entertaining, and which amused countless New Yorkers, be-

cause "La Ronde" has been made in the same satiric vein and is being presented on the screen in the same spirited way as "Kind Hearts and Coronets."

But, whereas the latter makes light of the sin of murder, the French picture presents a series of illicit love scenes in a droll and witty manner. One must conclude, therefore, that the New York board members believe that a satire on murder is not apt to corrupt the morals of our citizens, but that one based on the lighter side of love may do so.

Planned Deletions Here

"La Ronde" is an enchanting picture, and with the few deletions which the importers intend to make to conform with the Breen office code, I see no reason why the film should be kept from adult audiences here or anywhere.

The background of the French film is Vienna about the turn of the century, when the Austrian capital was one of the gayest and most fascinating playgrounds in the world. Arthur Schnitzler, whose "Reigen" is the basis of the film, [fol. 54] wrote the play in 1900, but it was not produced on the stage until 1920.

The presentation of the various incidents in "La Ronde" is done in an original manner, with Anton Walbrook, who has appeared in many British films, notably as the impresario in "The Red Shoes," acting as the story-teller and the spirit that moves the various characters of the story into place.

Portrayed by Fine Cast

There is more than a touch of fantasy in the various episodes, each of which is acted with adroitness and a high sense of the comic. Danielle Darrieux is beautiful as a married woman who becomes the amorous object of a young man's fancy. The latter is cleverly represented by a rising young French actor, Daniel Gelin. Fernand Gravet plays Miss Darrieux's husband amusingly, Simone Simon gives a pert performance of a parlor-maid and Simone Signoret is seen as a lady of the evening. Odette Joyeux plays a shop-girl delightfully and Isa Miranda is lovely in the role of a fascinating actress.

Serge Reggiani, Jean-Louis Barrault, of "Children of Paradise" fame, and Gerard Philipe, who made a hit as the

love-sick youth of "Devil in the Flesh," are importantly cast in the comedy.

Oscar Straus composed the background music. He is the composer of "The Chocolate Soldier," and wrote the music for two of Maurice Chevalier's films, "The Smiling Lieutenant" and "One Hour With You." "Love Makes the World Go Round," as sung by Walbrook, is a big hit all over Europe and is becoming popular here through its record sales.

[fol. 55] This Article Appeared on Page 27 of the Saturday Review of Literature, November 10, 1951

SRL Goes to the Movies

Worthy of Being Seen

I have been a little disappointed in the recent crop of pictures from France, but now my faith in the French film has been pleasantly bolstered by the arrival of "La Ronde," a delightful adaptation of Arthur Schnitzler's "Reigen." Max Ophuls, a director known to Hollywood as well as the Continent, has worked some minor miracles in turning this wry Viennese comedy into a movie for the adult film-goer. He first of all has assembled a splendid and glittering cast that includes Anton Walbrook, Gerard Philipe, Isa Miranda, Dannielle Darrieux, Daniel Gelin, Simone Simon, Jean-Louis Barrault, Fernand Gravet, and Odette Joyeux. Their turns before the camera are not long, but their portrayals have that quality of nuance that makes a second viewing almost obligatory. In addition to that Ophuls has frankly admitted the artificiality of Schnitzler's "round of love" and has made it work to his advantage by showing you, now and then, the cameras and the sound stage that provide the illusions, by bringing actors on and off, and by, in a sense, spoofing the whole business of worldly seduction. The required light touch is always there, and one always senses the humor of the director while appreciating the wit of the playwright. Perhaps most important of all, he has overcome the technical problem of making a play into a true movie, not simply the staging of one before the cameras. It's like a magician showing you how he accomplishes his tricks, and then fooling you again and again.

[fol. 56] Anton Walbrook is the master of ceremonies who runs the little merry-go-round of love, which turns to a wonderful lilting waltz tune by Oscar Strauss, and all Mr. Walbrook seems to be doing is illustrating the lyrics. But he is also giving you some brief, revealing glimpses into lives, types though they may be. Through the strata of a world-weary Viennese society the story spirals, until we find we have arrived at much the same point from which we have begun. It's more sad than bitter, more ironic than funny, and there's some haunting little message underneath it all, though, to be sure, you are never quite told what it is. I enjoyed every minute of it, and thought it delicately done and in excellent taste.

At this moment of writing "La Ronde" is playing in only two theatres in this country, though Paris, London, and other capitals have been seeing the movie for some time. Here it has run into a censorship difficulty. The Motion Picture Department of the New York State Board of Education has banned "La Ronde" on the ground that it tends to corrupt public morality, and the Board of Regents has concurred. This leaves the matter of appeal up to the courts, and perhaps the people, for these decisions are not irreversible. As a matter of fact, I can report on quite good authority that the official viewers thoroughly enjoyed "La Ronde" but felt that a dutiful interpretation of the state law prevented them from granting it a license. The distributors, who regard a mature New York audience as essential to the commercial success of the picture, would like to have the censorship question settled before putting it into general release. For other state and local censorship boards are all too likely to follow New York's lead.

[fol. 57] This article appeared on page 24 and was continued on page 96 of the

Theatre Arts,

December, 1951

A sensation in Europe, where it received the highest awards at the Venice, Cannes and Brussels film festivals, and shown successfully since its completion in 1950 on the Continent, in England and in South America *La Ronde,* a film version in French of the famous Arthur Schnitzler comedy *Reigen,* is at this writing to be seen only in Los Angeles and in Washington, D. C. in this country. The New York State censors have, at the moment, refused it a

license but, since the morals of picturegoers have not apparently been appreciably impaired at either the Federal or the film capital, its sponsors are optimistic about a lifting of the ban.

Reigen, on which *La Ronde* is based, is well-known to students of the theatre in spite of its general unavailability. Its history is a curious one. Written by the great Viennese dramatist in the winter of 1896-1897, it was published for private circulation among Schnitzler's friends and not brought out for the reading public until 1903. And it was not until 1920 that Schnitzler first approved a stage performance, feeling himself that the work might very well be misunderstood and misinterpreted.

I can recall no public performance of *Reigen* in the theatre here, book publication was banned in the United States and, except in German editions, the play was unknown to Schnitzler's American admirers until 1929, when it was privately printed for members of the Schnitzler Society. It is perhaps because of the singular hush that [fol. 58] has always surrounded this particular work of the Austrian *fin de siècle* dramatist and novelist that, to find it now, skipping book publication and theatre presentation, disporting itself nonchalantly on the screen for world audiences, is especially amusing.

Although Schnitzler's fame was the result of his brilliant portrayal of Viennese life—he was always rated a distinctly Austrian playwright—his sprightly wit was essentially Gallic. The flexibility of his style, the acuteness of his observation, his dispassion and subtle malice, his 'frivolity tinged with regret,' as Ashley Dukes put it, are characteristics of the French. So it seems only fitting and proper that it is the French who have brought his little masterpiece to the screen. And, in *La Ronde,* the French have not let him down.

The play is a series of ten comedies, each a dialogue between a man and a woman and each sequence linked to the one before by a character who passes on into the next sequence. All are psychological studies, the personæ culled from different social strata, the subject the interplay of sex. In the first of the cycle, a streetwalker picks up a soldier. In the second, the soldier leaves her for an affair with a parlormaid. The parlormaid is seduced by the son of the

house. He, in turn, has an intrigue with a respectable young married woman. The stodgy husband of the married woman has an amour of his own, a working girl who throws him over for a successful poet-playwright, who forgets her for a famous and dazzling comedienne. The actress is fascinated by a young officer who, after enjoying her favors, is picked up by the street girl of the first sequence, completing the cycle.

[fol. 59] The subject matter, in the hands of a lesser artist than Schnitzler, might very well have become sordid, furtive, dreary, offensive. But the line of good taste in *Reigen* is never transgressed. The point of view is adult and civilized. The detachment, the fastidiousness, the graceful discretion of the playwright bring to even the most comic aspects of the piece a disenchantment and a mournfulness, create a mood of mingled absurdity and pathos, of mirth and melancholy that, in spite of the groans of the moralists, is most unlikely to tempt even the lowest grade moron to venture on to the primrose path.

Produced in Paris by Sasha Gordine, *La Ronde* has been given a loving and, in the main, faithful screen treatment by one of France's cleverest writers of comedy, Jacques Natanson, brilliant direction by Max Ophuls, known in the United States for his work in the Hollywood film *Letter From An Unknown Woman,* a charming waltz score by Oscar Strauss of *Chocolate Soldier* fame, and a galaxy of stars so competent that there seems almost an argument here for the revival of the dying star system.

Best known of the actors to this country's cinema audiences are Simone Signoret, who plays the realistic street-girl in the first and last sequence; Simone Simon who vindicates herself at last in the role of the disillusioned parlor-maid; Danielle Darrieux, lovely as the bored young wife curious about unrespectable women; Fernand Gravet as the hypocrite-husband who admires only purity; Odette Joyeux as the mousey midinette, tempted by the hypocrite-husband's offer of dinner in a cafe's private dining room; Jean-Louis Barrault, inheritor on the Paris stage of the [fol. 60] mantle of the late Louis Jouvet, as the poet-playwright, happy for an hour with the midinette who has succumbed to his charms unaware of his fame; Isa Miranda as the sophisticated actress who torments the playwright but

is herself deserted by the handsome army officer she wants, the officer played by Gerard Philipe, present delight of the Paris bobbysoxers.

The picture, like the play, is a series of vignettes presented with an economy of means, a clever unpretentiousness that permits no distraction from the dialogue and no interference with the precision of Schnitzler's character drawing. Every phase of the game of love, from the single-minded brutality of the soldier through the finesse of the playwright to the courtly indifference of the officer aristocrat is examined with clinical honesty yet the overall impression is of a peering into a nostalgic dream world in which the hunted inevitably becomes the hunter and the game goes on without end. Writing of this play many years ago, Percival Pollard called it a 'tragedy of human wishes unsatisfied even in their apparent gratification.' And, when one considers the tons of temperament involved in a project peopled by top artists in every department, it seems a major miracle that the mood of the play has been sustained throughout, that the overall irony has not been dissipated, that not even the subtlest nuances have been lost.

There have been few script changes in the body of the work in its translation to the screen and these relatively minor—a new locale for the actress-playwright scene, the omission of an occasional line perhaps too local for understanding outside Austria. But there has been an addition [fol. 61] to the play which will probably be distressing to Schnitzlerites, which must have been intended for clarification of the theme and which, giving the story a fairy-tale quality, may justify itself by serving to allay the spectre of censorship.

La Ronde is told in what is technically known as a 'frame.' A mysterious character, played by Anton Walbrook, who introduces himself at the opening of the picture elegantly clad in opera cloak and top hat as 'your master of ceremonies,' purports to be demonstrating, as a kind of puppet-master, what goes on behind the scenes in the human psyche.

Obviously Jacques Natanson, who wrote the film script, felt he needed this new and extra character for explanatory purposes and to furnish a focal point for an episodic story. Since the plot is clear as glass and the merry-go-round quality of the tale its chief technical distinction, the Wal-

brook character is, to put it politely, a work of supererogation. On this spectator, Mr. Natanson's original creation had much the impact of the screen credits of the old film *Taming of the Shrew*, which read 'by William Shakespeare with additional dialogue by Sam Taylor.' But this is after all, a small thing at which to cavil in a truly extraordinary picture. And the dramatists of today may not indeed agree with Schnitzler who said, when questioned about his theories of playwriting technique, 'As for myself, I let the curtain go up when it begins to be amusing and I let it go down when I consider fit.'

[fol. 62] This article appeared on page 6 of

The Film Daily

Wednesday, January 16, 1952

"La Ronde"

Tops Ten Best List in
Cuba Critic Poll

Havana (By Air Mail)—"La Ronde," French production, was voted the best film imported into Cuba in 1951 by ARTYC, the organization of cinema critics.

Other critical selections making up the Ten Best were: "Bitter Rice," "Cyrano de Bergerac," "Tallyrand," "La Mafia," "Salt to the Devil," "An American in Paris," "Strangers on a Train," "Born Yesterday" and "Les Maudits."

This article appeared on page 17 of the

New York Herald Tribune

Wednesday, February 20, 1952

British Honor 'La Ronde," a Movie Banned in N. Y.

London, Wednesday, Feb. 20 (AP)—The British Film Academy today voted the French film "La Ronde" the best of 1951.

The film, based on the play "Reigen," by Arthur Schnitzler, was directed by Max Ophuls.

[Banned in New York State by the Division of Motion Pictures of the State Education Bureau, "La Ronde" has been shown in this country in Washington and Los Angeles.]

[fol. 63] This article appeared on page 2 of

Variety

Tuesday, February 26, 1952

British Film Acad Votes 'La Ronde'
Best Pic of 1951

London, Feb. 25.—British Film Academy has voted the French-made "La Ronde" as winner of its 1951 award for "best film from any source, British or foreign." Hollywood's "All About Eve" got the nod last year.

"The Lavender Hill Mob" copped "best British film" award, and Walt Disney's "Beaver Valley" "best documentary." Special award went to "Gerald McBoing Boing," cartoon produced by United Productions of America. Both American films last year were Oscar winners in Hollywood's 1950 Academy sweepstakes, "Valley" for two-reel short subjects, "Gerald" for cartoons.

Total of 17 pictures, British and foreign were nominated in British sweepstakes, including six American features, "An American in Pairs," "Detective Story," "Fourteen Hours," "The Red Badge of Courage," "The Sound of Fury," "A Walk in the Sun." French drew two nominations, British eight and Italians one.

[fol. 64] This article appeared on page 10 of the

Detroit Free Press

Thursday, March 20, 1952

Star Gazing: Love Makes Its Round in 'La Ronde' Fantasy

By Helen Bower

Treated with the utmost delicacy, yet not without irony, cynicism and humor, an exquisitely-presented fantasy for the mature has come from France in "La Ronde." The film will open Thursday at the Studio, Center and Coronet Theaters simultaneously.

Voted by the British Film Academy as 1951's best film, it has already run nine months in London, six in Los Angeles, four in Washington and San Francisco. By Friday it may have won an Academy Award for art direction in a black-and-white production, for which it was nominated.

In Vienna in 1900 Arthur Schnitzler wrote a play called "Reigen," which means "round dance." From this the movie was adapted as "La Ronde," or "the circle," set in Vienna in 1900.

Max Ophuls' direction has woven nine incidents of errant love into a fabric of gossamer relationship fluttering to the carousel music of a waltz by Oscar Straus, famous for "The Chocolate Soldier." The picture leaves no doubt of Ophuls' artistry.

The film's objective view of its subject is established with the first strolling entrance of Anton Walbrook, remembered from "The Red Shoes." He is the commentator, the interpreter, the raconteur.

[fol. 65] The setting in which he appears moves from fantasy to the Vienna byway where a girl of the streets, Simone Signoret, waits for a soldier, Serge Reggiani.

Between each of the linked episodes Walbrook appears beside the gay little Viennese merry-go-round as he sings another verse to the tinkling waltz tune.

The soldier on his Saturday night leave takes a little housemaid, Simone Simon, dancing. Next in a new household the maid attracts the young son of the family, Daniel Gelin.

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As the circle curves the characters are progressively higher in the social scale. The young man falls in love with the married woman, Danielle Darrieux.

Here the acting reaches its highest level in Mlle. Darrieux' doubts, hesitations and final surrender.

Carried over at the same high level of performance is the scene between the married woman and her husband, Fernand Gravet.

These sequenes have a special quality of humor—subtle, tender and wistful. The wife reads Stendhal, which the young man had quoted. The husband, astonished by his wife's comments, warns her against women who might seek her friendship from "a nostalgia of virtue" and speaks pompously of the mysterious nature of marriage to a man who has seen something of the world.

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[fol. 66] Yet the husband goes on to have an affair with the little dressmaker, Odette Joyeaux, whom he takes to sup-

per in a private room. Mlle. Joyeux is very funny for her unflagging interest in the food and champagne.

Then she fails to keep a rendezvous with the husband because she has turned to the poet, Jean-Louis Barrault.

He is actually a famous playwright who wants to go away with the actress, Isa Miranda. Ironic humor reaches its climax in the formal call paid upon the actress at home by the count, Gerard Philipe, in gold-braided uniform, cloak and plumed helmet.

At the last the count, having staggered out of a restaurant, spends a night of oblivion in the room of the girl of the first scene.

In the stylized manner of the entire production, the count leads his greyhound out of the Vienna set into the fantasy beginning, meeting the soldier on his way. Walbrook then strolls past to say that the round is ended, the "love of the art of love" is over, the carousel music is silenced.

[fols. 67-68] These articles appeared on pages 1 and 6 respectively in

The Film Daily

New York, Wednesday, February 13, 1952

Academy Nominations Are Announced

Final Ballots to Be Mailed to Full Academy Membership on Feb. 26, With Awards Presented on March 20

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Best Art Direction

Black-and-White Production

"Fourteenth Hours," (20th-Fox), Lyle Wheeler and Leland Fuller; set decoration, Thomas Little and Fred J. Rode; "The House on Telegraph Hill", (20th-Fox); Lyle Wheeler and John DeCuir; set decoration, Thomas Little and Paul Fox; "*La Ronde,*" (Sacha Gordine-Commercial Pictures) (French), D'Eaubonne; "A Streetcar Named De-

sire," (Feldman-Warner Bros.), Richard Day; set decoration, George James Hopkins; "Too Young to Kiss," (M-G-M), Frederick Gibbons and Paul Groesse; set decoration, Edwin B. Willis and Jack D. Moore.

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Academy Nominations for "Oscars"

Screenplay

This award is for the writer or writers of the final screenplay, which regardless of whether developed from published material or in unpublished story form is by some other writer or writers: "The African Queen," (Horizon-UA), screenplay by James Agee and John Huston; "Detective Story," (Paramount), screenplay by Philip Yordan and Robert Wyler; "*La Ronde,*" (Sacha Gordie—Commercial Pictures), (French), screenplay by Jacques Natanson; "A Place in the Sun," (Paramount), screenplay by Michael Wilson and Harry Brown; "A Streetcar Named Desire," (Feldman-Warners), screenplay by Tennessee Williams.

[fol. 69] In Supreme Court of New York, Appellate Division—Third Department

Notice of Appeal to the Court of Appeals

[Title omitted]

Sir:

Please take notice that the petitioner above named hereby appeals to the Court of Appeals of the State of New York from the final order in the above-entitled proceeding entered in the Office of the Clerk of the County of Albany on the 27th day of June, 1952, which was entered upon an order of the Appellate Division of the Supreme Court, Third Judicial Department, entered in the Office of the Clerk of said Appellate Division on the 27th day of June, 1952, which said order, two Justices dissenting, affirmed the determination of the Board of Regents of The State of New York which refused to grant a license for the exhibition of the motion picture, "La Ronde."

[fol. 70] Please take further notice that the plaintiff appeals from each and every part of said order of the said Appellate Division of the Supreme Court, and from the whole thereof.

Yours, etc., Florence Perlow Shientag, Attorney for Petitioner, 737 Park Avenue, New York, New York. Nemeroff, Jelline, Danzig & Paley, Attorneys for Petitioner, 350 Fifth Avenue, New York, New York.

To: The Clerk of the County of Albany. Charles A. Brind, Esq., Attorney for Respondents, State Education Building, Albany, New York.

[fol. 71] In Supreme Court of New York, Appellate Division, Third Department

Order of Affirmance—June 27, 1952

The above-entitled proceeding having been duly brought to argument at the above captioned term and having been argued by Florence Perlow Shientag, Nemeroff, Jelline, Danzig & Paley, Esqs., attorneys for petitioner and Charles [fol. 72] A. Brind, Jr., Esq., attorney for respondents, and due deliberation having been had and a decision thereon having been handed down on the 13th day of June, 1952, it is

Ordered that the determination of the respondents be, and the same hereby is, confirmed with Fifty ($50.00) costs and disbursements. Opinion by Bergan, J., Heffernan and Coon, JJ., concur; Foster, P. J., dissenting in an opinion in which Brewster, J., concurs.

John S. Herrick, Clerk.

Ent. 6/27/52.

[fol. 73] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT

DECISION—June 13, 1952

In the Matter of the Application of Commercial Pictures Corporation, Petitioner, for an Order v. The Regents of the University of the State of New York, Respondents

Determination confirmed with fifty dollars costs and disbursements.

Opinion by Bergan, J.

Heffernan and Coon, JJ., concur.

Foster, P. J., dissents in an opinion in which Brewster, J., concurs.

[fol. 74] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD DEPARTMENT

In the Matter of COMMERCIAL PICTURES CORPORATION, Petitioner, for an Order against the REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK, Respondents

Argued, May Term, 1952.
Decided, June 13, 1952.

Before Hon. Sydney F. Foster, Presiding Justice; Hon. Christopher J. Heffernan, Hon. O. Byron Brewster, Hon. Francis Bergan, Hon. William H. Coon, Associate Justices

Proceeding pursuant to Civil Practice Act, Article 78, to review a determination of the Board of Regents.

[fol. 75] Florence Perlow Shientag, Attorney for Petitioner, 270 Broadway, New York, New York.

Nemeroff, Jelline, Danzig & Paley, 350 Fifth Avenue, New York, New York, Attorneys for Petitioners (Mitchell Jelline, of counsel).

Charles A. Brind, Jr., Attorney for Respondents, State Education Building, Albany, New York.

OPINION FOR CONFIRMATION

BERGAN, J.:

The Board of Regents having affirmed a determination of the Motion Picture Division of the State Education Department refusing to license exhibition of the French film "La Ronde", the petitioner brings here a proceeding to review in pursuance of Civil Practice Act, Article 78.

New York's statutory policy in licensing motion picture films for public exhibition is expressed in Education Law, § 122, which provides that licenses shall be granted unless, among other things, the film is "immoral" or is of such character that its "exhibition would tend to corrupt morals."

The Supreme Court has very recently held that New York was without power to withhold a license by virtue of this section of the Education Law on the ground a film was deemed by the Regents to be sacrilegious (*Burstyn* v. *Wilson*, — U. S. —). We have no doubt, however, both from the area that was expressly left open in that case by the Supreme Court and from the generally accepted power of a [fol. 76] state to deal by its municipal law with matters deemed offensive to public morals that the statute delegating the power of licensing to the Regents remains valid to that extent in a proper case.

On its review of the Education Department's determination adverse to "La Ronde", the Regents referred the question of evaluating the film to committee of its own members who reported the opinion that the film presents a chain of sequences "each dealing with * * * amorous adventures" of which "promiscuity is the central theme". The committee felt that "prostitution and sex indulgence is the end result."

The view expressed by the committee was that the presentation of the film in New York would be "immoral" and "would tend to corrupt morals". The Regents adopted this report and affirmed the refusal of the department to issue the license.

The film has been exhibited to us. Upon the basis of our evaluation of it; upon what American and English critics think of it as a work of art; upon its reception among artists and journalists; and upon the public permission for exhibi-

tion granted in many large and diverse communities, we are asked to annul what the Regents have determined and direct a license be issued in New York.

It is argued that the film ran nearly two years in Paris, over a year in London which has quite rigid standards in this respect, and was voted the best film from any source by the British Academy. It was exhibited for relatively long periods in Los Angeles, San Francisco, Washington, St. Louis and Detroit. There have been high evaluations of it by reputable critics.

[fol. 77] It could, however, be argued and believed by fair-minded men that this film is immoral and perhaps also that it would "tend to corrupt" public morals. If we say this we come to the end of our inquiry, even though we admit that other fair-minded men could argue and believe that the film is not immoral from any mature aspect and that it would leave public morality profoundly uncorrupted.

Even if we had very strong and favorable impressions of the artistic acceptability and dramatic integrity of the film, and a majority of the court have some reservations, to say the least, about that, we would feel an absence of judicial power to impose those views on the Regents and to require by judicial mandate a license for the public exhibition of the film.

It is pleaded by the petitioner here that the Regents have been "unreasonable", "discriminatory" and "arbitrary" in refusing to direct a license be issued, and thus the case brings up the wide and ranging difficulties and the delicate adjustments that inhere in a process by which reviewing judges look into and sometimes undo the work of administrative officers.

Satisfactory definitive terms to give sure footing to the tread of future cases have never been formulated. No one has been able clearly to mark out in advance the exact point where a judge will interfere, and separate it from the area in which he will not interfere, with what the administrator has done.

Loose adjectives like "unreasonable" and "arbitrary" and "capricious" and "unwarranted" have been used to describe the kind of administrative decision which brings [fol. 78] about judicial interference, but, of course, the

shortcoming of these words is that they mean quite different things to parties on the opposite side of a case.

What is not so clearly understood about the process of reviewing the work of administrators is that resort must be had to standards which the legal profession has learned as part of its disciplined study and its pragmatic experience and which can be formulated if at all only in the terms of a tradition.

Thus, when a judge hands down a ruling that an administrator has been "unreasonable" or "arbitrary", he does so because, of course, in the first place he disagrees with what the administrator has done; but that is not all there is to it. He uses "unreasonable" and "arbitrary" not quite in the word sense in which they are to be found in general dictionaries but he uses them and a whole other group of words freighted with a meaning that generations of lawyers have added to them as part of the material which the profession used to give voice and expression to law.

If more scientific definition were contrived the task of the lawyer in advising his client what to do would be infinitely easier and prediction of judicial action would be something more of an exact science. But a forecast based on an informed professional synthesis is itself a science and not only requires the dedication of intelligent experience and objective thinking to the task, but its practice is the most significant way in which the lawyer serves the community. A man does not need legal advice to know he violates a traffic law when he passes a red light but there are wide areas of [fol. 79] law where his protection and safety lie in the judgment of the profession addressed to future judicial action.

Nowhere is the hardness of the ground of definition in the field of judicial review better illustrated than in the opinion of Mr. Justice Frankfurter in *Universal Camera Corp.* v. *National Labor Rel. Bd.* (340 U. S. 474 [1951]), a decision now frequently pressed on the attention of this and other courts which review administrative determinations and cited on this appeal to authorize a revocation of the Regents' determination.

There the court had before it the question whether the power and duty of inquiry on judicial review of determinations of the National Labor Relations Board had been

widened by congressional use of the term "supported by substantial evidence on the record considered as a whole" instead of the previous words "supported by evidence" (p. 477).

The problem presented revolved around the scope of inquiry under a specific federal statute, but the definitive difficulties met by the court are characteristic of the trouble with terminology in judicial review generally. Several distinct attempts were made by the court at re-definition (pp. 488, 489). For instance, the requirement "for canvassing 'the whole record' " does not "furnish a calculus of value" by which the reviewing court can "assess the evidence" (p. 488).

But at the end of this and a series of other undertakings in the opinion toward definition, it was admitted that new expressions are unlikely to be better than old ones and that the way the courts interfere with administrative findings [fol. 80] "cannot be imprisoned within any form of words" (p. 489).

These failing steps toward definition lead back and around again to a resort to legal tradition; to the judge speaking from, and affected by, the disciplined standards of his own profession. The trained lawyer can weigh and predict judicial action based on those standards which both he and the judge sense together, whatever the weaknesses may be in formulation.

There exists on the judicial side of the work a certain detachment from the heat of the quarrel, an objectivity that neither contestant is expected to feel but which both sides expect the judge to have. This allows the judge to see patiently the administrative action complained of in the light of historic and of future power and the effect of that power on the community and the laws of the community; and it implies that the judge has the insight to see that even if he would do the administrator's work differently he would not necessarily undo it in the case at hand.

The process of judicial review involves the judge projecting himself into the place of the administrator and learning that there are admissible viewpoints in the administrator's work which may be quite different from some that the judge thinks of as important; and admissible policies and decisions to which the judge, had he full freedom of action,

might not subscribe but which he deems necessary to sustain on review. The process is not unlike the one by which juries attempt to see the intentions of contracting parties and the anticipations of those involved in torts.

[fol. 81] It is our judgment based on the professional view that has been taken rather consistently in cases of this kind that a ground sufficient to warrant interference with the Regents' judgment that "La Ronde" is immoral has not been shown.

The determination of the Regents should be confirmed with $50 costs and disbursements.

FOSTER, P. J., dissenting:

We have before us for review a determination of the Board of Regents which refused to license the exhibition of a motion picture known as "La Ronde". The statutory scheme for the censorship of motion pictures is contained in section 122 of the Education Law. Recently (May 26, 1952) the Supreme Court of the United States held that a motion picture (The Miracle) could not be barred under the statute cited on the ground that it was sacrilegious. The decision went further however. It held that expression by means of motion pictures is included within the free speech and free press guaranty of the First and Fourteenth Amendments to the Constitution of the United States. To that extent it overruled or repudiated a previous decision (1915) in Mutual Film Corp. v. Industrial Comm'n., (236 N. Y. 230), which held in effect that motion pictures were not to be regarded as organs of public opinion but merely as entertainment spectacles.

We now have a different rule to follow, and the question naturally arises whether the statute involved, providing, as it does, for a previous restraint in the licensing of motion pictures, is constitutional. The Supreme Court decision in The Miracle case left open the question of whether a state [fol. 82] may censor motion pictures under a clearly-drawn statute designed and applied to prevent the showing of obscene films.

Since films are now entitled to protection of the First and Fourteenth Amendments a previous restraint thereon is, by all analogy, an infringement upon freedom of expression

and repugnant to constitutional guarantees (Near v. Minnesota, ex rel. Olson, 283 U.S. 697). Freedom of expression is the rule, not the exception. It is difficult to see how a statute can be drawn, providing for previous restraint, that would be consistent with such views. Either motion pictures may be censored or they cannot be. I can see no practical middle ground. That is not to say, of course, that punishment may not follow after the event if a law against obscenity or immorality has been violated. This is the traditional constitutional view as to speech and press. The individual is free to say or write what he thinks, but he must accept the responsibility therefor and may be punished if he offends the law.

Since freedom of expression is the rule and any limitation thereof may only be exercised in exceptional cases the statute under which the Regents acted can hardly be envisaged as the "clearly drawn statute" which the Supreme Court mentions. Except for news, educational and scientific films it confers a broad power of censorship. The deep inconsistency between this power and the constitutional guarantee of freedom of expression is well illustrated in this State by the limited power of review which the courts may exercise over the acts of an administrative body such as the Regents. If there is substantial evidence to sustain the [fols. 83-84] determination of such a body, or even a reasonable basis to sustain it, the courts may not interfere and substitute their judgment. Thus, if the issue is debatable, the action of the administrative body is uniformly upheld. As applied to censorship, and apply it we must if the statute in question is a valid one, such a rule would seem fallacious. In dealing with an issue of free expression the rule should be quite to the contrary, and the determination of any board or bureau should only be upheld where it is clear that any conclusion to the contrary would not be entertained by any reasonable mind. It is wholly inconsistent with a constitutional guarantee to leave any debatable issue of morals, involved in any form of protected expression, to the final decision of an administrative agency. Since a constitutional issue is involved litigants should be entitled to the independent judgment of a competent court after the event.

In the present case the film in question is certainly not

obscene. It has been condemned on the ground that it is "immoral" and its presentation "would tend to corrupt morals". True it deals with illicit love, usually regarded as immoral. But so is murder. The theme alone does not furnish a valid ground for previous restraint. As to its presentation corrupting the morals of the public, this issue is highly debatable. The record indicates a vast body of informed opinion to the contrary. Under such circumstances the action of the Regents impinges on petitioner's constitutional right of free expression.

I am constrained to hold that the statute providing for censorship is unconstitutional, but in any event that the film in question is not so immoral as to justify censorship.

The determination should be annulled.

[fol. 85] IN SUPREME COURT OF NEW YORK

AFFIDAVIT IN LIEU OF CERTIFICATION

STATE OF NEW YORK,
County of New York, ss:

Florence Perlow Shientag, being duly sworn, deposes and says: That she is the attorney for the petitioner-appellant herein.

That deponent makes this affidavit pursuant to Sections 170a and 616 of the Civil Practice Act and Rule 234, as amended, of the Rules of Civil Practice, since the attorney for the respondents has been requested to stipulate as to the correctness of the record and has failed or refused to do so and has failed or refused to waive certification thereof. The foregoing printed record on appeal has been personally verified by me with the originals on file in the office of the Clerk of the County of Albany and found to be true and complete copies of said originals and the whole thereof, of the order transferring proceeding to Appellate Division, the order appealed from and all the papers which were used in the Court below, now on file in the office of the Clerk of the County of Albany.

Florence Perlow Shientag.

Duly sworn to by Florence Perlow Shientag; jurat omitted in printing.

[fol. 86] Reporter and Judges Certificate (omitted in printing).

* * * * * * *

[fols. 87-89] IN THE COURT OF APPEALS OF STATE OF NEW YORK

In the Matter of COMMERCIAL PICTURES CORPORATION, APPELLANT, against BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK, Respondent.

OPINION

Argued January 7, 1953; decided May 28, 1953

[fol. 90] FROESSEL, J.

The Motion Picture Division of the State Education Department and the Regents of the University of the State of New York have determined that the motion picture "La Ronde" (revised), produced in France, is not entitled to be licensed for public exhibition, upon the ground that it is "immoral" and "would tend to corrupt morals" within the meaning of section 122 of the Education Law of this State. The Appellate Division has confirmed the determination.

The film from beginning to end deals with promiscuity, adultery, fornication and seduction. It portrays ten episodes, with a narrator. Except for the husband and wife episode, each deals with an illicit amorous adventure between two persons, one of the two partners becoming the principal in the next. The first episode begins with a prostitute and a soldier. Since the former's room is ten minutes walk from their meeting place on the street, and the soldier must hurry back to his barracks, they take advantage of the local environment. She informs him that "civilians" pay, but for "boys like you it's nothing". The cycle continues with the soldier and a parlormaid; the parlormaid and her employer's son; the latter and a young

married woman; the married woman and her husband; the husband and a young girl; the girl and a poet; the poet and an actress; the actress and a count, and finally the count and the prostitute. At the very end, the narrator reminds the audience of the author's thesis: "It is the story of everyone".

Petitioner contends that the statute is invalid, in that it imposes a prior restraint upon the exercise of freedom of speech and press, relying principally upon *Joseph Burstyn, Inc.* v. *Wilson* (343 U. S. 495 [1952]), which overruled *Mutual Film Corp.* v. *Ohio Ind. Comm.* (236 U. S. 230 [1915]). In addition, it is contended that the standard here applied is too vague and indefinite to satisfy the requirements of due process. Respondent maintains that [fol. 91] the *Burstyn* case *(supra)* is not controlling here, and that the standard in question is sufficiently clear and definite. The issue so presented may be posed thus:

(1) Are motion pictures, as part of the press, altogether exempt from prior restraint or censorship?

(2) Do the words "immoral" and "tend to corrupt morals", in section 122 of the Education Law, viewed in the perspective of their legislative setting, fail to provide a standard adequate to satisfy the requirements of due process?

(3) Has the statute been properly applied herein?

1. Our answer to the first question must be in the negative, as it was in the *Burstyn case* in this court (*Matter of Joseph Burstyn, Inc.* v. *Wilson*, 303 N. Y. 242, 262; see, also, concurring opinion of DESMOND, J., at pp. 263-264). That question was not reached by the Supreme Court of the United States in *Joseph Burstyn, Inc.* v. *Wilson* (343 U. S. 495, *supra*, pp. 502-503, 505-506), and the language employed therein aptly refutes the notion that all media of communication may be grouped under a precise and absolute rule: "To hold that liberty of expression by means of motion pictures is guaranteed by the First and Fourteenth Amendments, however, is not the end of our problem. It does not follow that the Constitution requires absolute freedom to exhibit every motion picture of every kind at all times and all places. That much is evident from the

series of decisions of this Court with respect to other media of communication of ideas. Nor does it follow that motion pictures are necessarily subject to the precise rules governing any other particular method of expression. Each method tends to present its own peculiar problems." Nor did *Gelling* v. *Texas* (343 U. S. 960), decided the week following on the authority of the *Burstyn* case (343 U.S. 495, *supra*), resolve the issue left open therein.

Insofar, then, as motion pictures tend to present their "own peculiar problems", we think they may properly become the subject of special measures of control. If, as we believe, motion pictures may present a "clear and present danger" of substantive evil to the community (*Schenck* v. *United States,* 249 U. S. 47, 52), then the Legislature may act to guard against such evil, though in so doing it overrides to a degree the right to free expression (*Poulos* v. *New Hampshire,* 345 U. S. 395; *Beauharnais* v. *Illinois,* 343 [fol. 92] U. S. 250; *Dennis* v. *United States,* 341 U. S. 494; *Communications Assn.* v. *Douds,* 339 U. S. 382; *Kovacs* v. *Cooper,* 336 U. S. 77; *Chaplinsky* v. *New Hampshire,* 315 U. S. 568; *Schenck* v. *United States, supra; Fox* v. *Washington,* 236 U. S. 273). As was said in *Crowley* v. *Christensen* (137 U. S. 86, 89): "the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will."

The highest court in the land has recognized the right of the State to act to protect its citizens, even to the extreme of interfering with personal liberty, against the threat of disease (*Jacobson* v. *Massachusetts,* 197 U. S. 11). In that case, the court declared (p. 27): "Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members." The same court later held that principle broad enough to permit the State to protect itself against the perpetuation of heredity strains of imbecility through sterilization (*Buck* v. *Bell,* 274 U. S. 200, 207). If it may so act to prevent physical disease or the birth of the "manifestly unfit",

may it not likewise act to prevent moral corruption, when the consequences thereof affect not only family life, as we know it in this State and country, but the health and welfare of our people as well?

The problem of preserving individual rights under the Constitution and still securing to the State the right to protect itself is not always an easy one, and it is sometimes difficult to find the proper balance between them. There is no mathematical formula for accommodating the rights of the individual to the good of the community, and we fully recognize that care must be exercised when preserving one not to suppress the other. But there "is no basis for saying that freedom and order are not compatible. That would be a decision of desperation. Regulation and suppression are not the same, either in purpose or result, and the courts of justice can tell the difference" (*Poulos* v. *New Hampshire, supra,* p. 408).

[fol. 93] Of course it is true that the State may not impose upon its inhabitants the moral code of saints, but, if it is to survive, it must be free to take such reasonable and appropriate measures as may be deemed necessary to preserve the institution of marriage and the home, and the health and welfare of its inhabitants. History bears witness to the fate of peoples who have become indifferent to the vice of indiscriminate sexual immorality—a most serious threat to the family, the home and the State. An attempt to combat such threat is embodied in the sections of the Education Law here challenged. It should not be thwarted by any doctrinaire approach to the problems of free speech raised thereby.

That a motion picture which panders to base human emotions is a breeding ground for sensuality, depravity, licentiousness and sexual immorality can hardly be doubted. That these vices represent a "clear and present danger" to the body social seems manifestly clear. The danger to youth is self-evident. And so adults, who may react with limited concern to a portrayal of larceny, will tend to react quite differently to a presentation wholly devoted to promiscuity, seductively portrayed in such manner as to invite concupiscence and condone its promiscuous satisfaction, with its evil social consequences. A single motion picture

may be seen simultaneously in theatres throughout the State. May nothing be done to prevent countless individuals from being exposed to its vicious effects? To us the answer seems obvious, especially in the light of recent technical developments which render the problem more acute than ever. Now we have commercially feasible three-dimensional projection, some forms of which are said to bring the audience "right into the picture". There can be no doubt that attempts will be made to bring the audience right into the bedchamber if it be held that the State is impotent to apply preventive measures.

Such preventive measures necessarily embrace some form of censorship. It is significant that the American motion picture industry has adopted that very method of self-discipline as the effective remedy for immoral motion pictures through its well-known Code of Production Standards. The people of this State should not be compelled [fol. 94] to rely upon the motion picture industry's own standards of review; nor, in the case of a foreign film, solely upon the customs officials (U. S. Code, tit. 19, § 1305), for their judgment "in admitting the film did not prevent the state officers from arriving at a different judgment when it came to the exhibition of the film and the granting of a license therefor" (*Eureka Productions* v. *Lehman*, 17 F. Supp. 259, 261, affd. 302 U. S. 634, 304 U. S. 541). They have the right to exercise their own sovereign powers to determine for themselves what motion pictures transgress the bounds of decency and sexual morality laid down by common consent.

As we see it, a statute which operates within limits suited to the attainment of such objectives, as does the enactment here challenged, is a reasonable and valid exercise of the police power. No other method will afford reasonably adequate protection to the public. Moreover, our statute places its administration in the hands of a responsible State agency, rather than with local officers who may at times be subject to petty prejudices or varying provincial views. Neither is it entirely out of place to point out that experience has demonstrated over the years that such censorship has been and can be carried out without undue hardship or even inconvenience as to motion pictures which meet the standards for public exhibition. We conclude,

therefore, that censorship, as such, is not in every case inimical to the rights of free speech and press guaranteed by the Constitution, so far as motion pictures are concerned.

2. We now turn to a consideration of the standard applied herein. Section 122 of the Education Law provides that a motion picture shall not be licensed if it is "obscene, indecent, *immoral,* inhuman, sacrilegious, or is of *such a character that its exhibition would tend to corrupt morals* or incite to crime". We are concerned here only with the words we have italicized. Appellant would have us read them as though they stood alone, without other guide than their dictionary meanings, and thereby find them too broad and vague to serve as a valid standard for the limitation of constitutional rights. The Legislature has not used them in a vacuum, however, but in context with other words and in a setting with other statutes *in pari materia,* as, e.g., sections 1140-a and 1141 of the Penal Law. Moreover, the "use of common experience as a glossary is necessary [fol. 95] to meet the practical demands of legislation", and the "requirement of reasonable certainty does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding" (*Sproles* v. *Binford,* 286 U. S. 374, 393). Even in criminal law, "The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices" (*Jordan* v. *De George,* 341 U. S. 223, 231-232).

Our Legislature has used the word "immoral", or its variants, in numerous other statutes (see Penal Law, §§ 483, 483-a, 483-b, 485, subd. 5; § 485-a, subd. 5; §§ 486, 494, 1140-a, 1141, 1141-a, 1147, 1290, subd. 4; §§ 1944-a, 2460; Education Law, §§ 2212, 3012, sub. 2; § 3013 subd. 2; §§ 3020, 6804; General Business Law, §§ 190, 191, subd. 3). Upon the basis of that standard, liberty, civil service tenure, and business licenses have been lost. To adopt the approach urged by petitioner would certainly throw doubt upon many of these enactments.

According to common understanding, the terms "immoral" and "morals" must be taken to refer to the moral standards of the community, the "norm or standard of behavior which struggles to make itself articulate in law"

(Cardozo, Paradoxes of Legal Science, pp. 17, 41-42). Thus the standards of any special and particular segment of the whole population are not to control, but those held by the community at large. As was said in *Block* v. *City of Chicago* (239 Ill. 251, 263-264): "There are the shameless and unclean, to whom nothing is defilement and from whose point of view no picture would be considered immoral or obscene. Perhaps others could be found, with no laxity of morals, who pay homage to art and would not regard anything as indelicate or indecent which had artistic merit, and would look upon any person entertaining different sentiments as of inferior intelligence, without proper training on the subject and blinded with bigotry. Both classes are exceptional, and the average person of healthy and wholesome mind knows well enough what the words 'immoral' and 'obscene' mean and can intelligently apply the test to any picture presented to him."

As applied to the general moral standards of the community, it is urged that such a standard may be too broad, [fol. 96] although standards equally broad have been successfully applied. The term "moral turpitude" has been held adequate to satisfy even the strict rule applicable to criminal statutes, with the comment that "doubt as to the adequacy of a standard in less obvious cases does not render that standard unconstitutional" (*Jordan* v. *De George*, 341 U. S. 223, 232, *supra*). So, too, the term "good moral character", as used in the immigration and nationality laws, must frequently be applied by the courts. In so doing, their measure is the "common standards of morality" prevalent in the community (*Estrin* v. *United States*, 80 F. 2d 105) or the "common conscience" of the community (*Johnson* v. *United States*, 186 F. 2d 588, 590).

It is not a valid criticism that such general moral standards may vary slightly from generation to generation. Such variations are inevitable and do not affect the application of the principle at a particular period in time (see *Parmelee* v. *United States*, 113 F. 2d 729). Neither may a standard be criticized on the ground that individual opinions may differ as to a particular application thereof. There is no principle or standard not subject to that infirmity, including the most specific provisions of the First Amendment (*Rochin* v. *California*, 342 U. S. 165, 170).

We are not unmindful of the fact that the provisions here in question, considered in the abstract, may be deemed broad, even as limited by common usage. Even in such case, however, it has been said that language "does not stand by itself * * * but is part of the whole body of common and statute law * * * and is to be judged in that context" (*Musser* v. *Utah*, 333 U. S. 95, 97). In the case now before us, we should not "parse the statute as grammarians or treat it as an abstract exercise in lexicography" (*Beauharnais* v. *Illinois*, 343 U. S. 250, 253, *supra*), but should read it as it was meant to be read by the Legislature that enacted it. In many of the statutes in which our Legislature has used the word "immoral" it obviously refers to sexual immorality. It is our view that it is used similarly in section 122 of the Education Law, as can be perceived in the statute itself, and in the construction put upon it, not only by the Regents herein, but by this court as well.

Turning to the statute, it will be noted that there is a related usage—a gradation of language, proceeding from [fol. 97] "obscene" to "indecent" to "immoral", words frequently used together in statutory enactments, and thence to generically different categories: "inhuman" and "sacrilegious". That juxtaposition colors the word "immoral" and justifies the application of the rule *ejusdem generis*, particularly when coupled with the subsequent expression "tend to corrupt morals", as was done here. (See McKinney's Cons. Laws of N. Y., Book 1, Statutes [1942 ed.], § 239; Penal Law, §§ 1140-a, 1141, where "obscene, indecent, immoral" are likewise grouped together; *People* v. *Wendling*, 258 N. Y. 451; *People* v. *Muller*, 96 N. Y. 408; *Regina* v. *Hicklin*, L. R. 3 Q. B. 360, 369-370; see also, *Eureka Productions* v. *Lehman*, 17 F. Supp. 259, affd. 302 U. S. 634, 304 U. S. 541, *supra*; *Swearingen* v. *United States*, 161 U. S. 446, 451.)

Apart from these considerations, it would appear that we have already construed the statute in precisely this manner. Section 1140-a of the Penal Law, and related sections, have been held to apply to motion pictures even prior to their express inclusion therein (*Hughes Tool Co.* v. *Fielding*, 297 N. Y. 1024). The theory of that decision was that

the Education Law and the Penal Law constitute complementary parts of a related whole. As used in the said Penal Law sections, the word "immoral" clearly relates to sexual immorality. Accordingly, its meaning in the Education Law should be the same, and the unpublished minutes of the proceedings of this court indicate that it was so treated in that case. *

Viewing the statute under consideration in its proper setting, then, the words "immoral" and "tend to corrupt morals" as used therein relate to standards of sexual morality. As such they are not vague or indefinite. In this sense they are kindred to "obscene" and "indecent", of which we have said: "They are words in common use, and every person of ordinary intelligence understands their meaning, and readily and in most cases accurately applies them to any object or thing brought to his attention which [fol. 98] involves a judgment as to the quality indicated. It does not require an expert in art or literature to determine whether a picture is obscene or whether printed words are offensive to decency and good morals." (*People* v. *Muller, supra,* pp. 410-411.) (See, also, *Chaplinsky* v. *New Hampshire,* 315 U. S. 568, 571-572, *supra*). It should be remembered that we are not here dealing with a moral concept about which our people widely differ; sexual immorality is condemned throughout our land.

3. The remaining question is whether the statute has been properly invoked against the motion picture "La Ronde". We have already noted that it is concerned solely with promiscuous sex relations and are told: "It is the story of everyone". Although vulgar pornography is avoided, suggestive dialogue and action are present throughout and not merely incidentally, depicting promiscuity as the natural and normal relation between the sexes, whether married or unmarried. Can we disagree with the judgment that such a picture will tend to corrupt morals? To do so

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* After our decision therein, section 1141 of the Penal Law was amended to exempt from its provisions moving picture films licensed by the State Department of Education (L. 1950, ch. 624). If, therefore, the State be required to grant a license here, petitioner will be immune from criminal prosecution.

would close our eyes to the obvious facts of life. The story is patterned after the book, which was condemned for obscenity in *People* v. *Pesky* (230 App. Div. 200, 202, affd. 254 N. Y. 373). There the Appellate Division stated "there was nothing to it except a description of the licentious * * * without a single redeeming feature." The author of the original work himself felt that it "might very well be misunderstood and misinterpreted", and so it was privately published. Even among the favorable reviews submitted by petitioner were such comments as:

"The details are concrete enough to make one blush unseen * * *.

"With something less than tremulous delicacy, he [the director] and his associate artists, speak quite freely upon the joys and woes of amorous adventure."

It may also be noted that among the industry's self-imposed limitations pertaining to sex are the following: "The sanctity of the institution of marriage and the home shall be upheld. Pictures shall not infer that low forms of sex relationship are the accepted or common thing." (Code of Production Standards, "Particular Applications" II, 1950 Year Book of Motion Pictures, pp. 920-922.) "La [fol. 99] Ronde" infers just that. In the minds of American motion picture producers, then, such a picture as is now before us would tend to "lower the moral standards of those who see it" (Code of Production Standards, "General Principles" 1).

We think it plain that we cannot say that the Regents were wrong in refusing the license herein. It has been suggested that we should form an independent judgment as to each picture which might become the subject of controversy between the distributor and the Regents, but that would simply mean that the powers granted to the Regents by statute could be arrogated to this court by judicial action. In the scheme of things, there must be some agency to which is entrusted the fact-finding power. In criminal cases it is the jury; in matters of administration generally, it is the administrative agency; in motion picture review, it is the Regents. No constitutional argument can be presented for having it otherwise. If the Regents err in law, we sit to correct them. If they must exercise

their fact-finding powers in a close case and do so honestly and fairly, then due process has been observed (see *Nash* v. *United States*, 229 U. S. 373, 377).

It is not for us to question the wisdom of placing that fact-finding power in the hands of the Regents rather than the courts. Neither do we think any such debate could be very productive, for strong and persuasive arguments can be made to the effect that an experienced administrative body is better qualified than a court to judge the effect of a particular motion picture, and that we of the judicial branch should not be left "at liberty to substitute our judgment for theirs, or to supersede their function as the spokesmen of the thought and sentiment of the community in applying to the [motion picture] * * * the standard of propriety established by the statute" (*People* v. *Pesky*, *supra*, pp. 373-374).

In summary, we conclude that motion pictures may be censored, upon proper grounds, and that sexual immorality is one such ground. The standard "immoral" and "tend to corrupt morals" embodied in the statute and here applied relates to sexual immorality, and the Regents had the right to find that the motion picture in question falls within the prohibited category.

The order appealed from should be affirmed, with costs.

[fol. 100] DESMOND, J. (concurring).

I concur for affirmance.

We review the refusal by the Board of Regents of the State of New York, acting under sections 120 and 122 of the State Education Law, to license the exhibition in New York State of the motion picture "La Ronde." Section 122 directs that every submitted motion picture film be licensed "unless such film or a part thereof is obscene, indecent, immoral, inhuman, sacrilegious, or is of such a character that its exhibition would tend to corrupt morals or incite to crime." The stated ground for the Regents' refusal here was that "La Ronde" was "immoral and tended to corrupt morals." The film depicts a series of illicit sexual adventures, nothing more, and is a close adaptation, for the screen, from Schnitzler's novel "Reigen" which, translated into English as "Hands Around," was held to be criminally

obscene in *People* v. *Pesky* (230 App. Div. 200, affd, 254 N. Y. 373). We have seen this motion picture, and, while we agree with appellant's counsel that it "has a distinguished cast and a brilliant production," we find, too, that its only discoverable theme is this: that everyone is sexually promiscuous, and that life is just a "round" of sexual promiscuity. It would be understatement to apply to this photoplay the characterization given another film in *Matter of Eureka Productions* v. *Byrne* (252 App. Div. 355, 357) that it "unduly emphasizes the carnal side of the sex relationship." This picture has no other content.

On this appeal, it seems to us, these three questions of law are to be answered, and in this order:

1. Is all pre-censorship of motion pictures violative of the First Amendment to the Federal Constitution?

2. If not, is the New York statute unconstitutional, for lack of precise standards, at the point where it permits the banning of a picture on a charge that it is "immoral" or "tends to corrupt morals?"

3. If questions 1 and 2 are both answered in the negative, was there reasonable basis here for the Regents' finding that "La Ronde" is immoral and tends to corrupt morals?

Our answers are these:

1. The New York State's motion picture censorship statute was enacted in 1921 (L. 1921, ch. 715), was held constitutional by this court in 1923 (*Pathe Exch.* v. *Cobb*, [fol. 101] 236 N. Y. 539), and except as to its use of "sacrilegious" as one of its standards, has never been held invalid. Our law, under which thousands of pictures have been licensed or denied licenses, is typical of the eight State statutes and perhaps seventy-five municipal ordinances that have made their appearance since the first such enactment: the Chicago ordinance of 1907 (*Block* v. *City of Chicago* 239 Ill. 251). In the Federal courts, such censorship statutes were, beginning about 1915, held not to contravene the First Amendment, which, it was at that time held, did not apply to motion pictures, since the exhibition thereof was then regarded as a mere part of the business of providing entertainment in theatres (see *Mutual Film Corp.* v. *Ohio Ind. Comm.*, 236 U. S. 230; *Mutual Film Co.* v. *Ohio Ind. Comm.*,

236 U. S. 247; *Mutual Film Corp.* v. *Kansas,* 236 U. S. 248). There were numerous similar holdings in various Federal and State courts. Appreciating the delicacy of the questions inherent in all censorship, but realizing, too, the danger, especially to the immature, of the free showing of demoralizing films (New York since 1909 has, for instance, limited attendance of children at motion picture theatres—see Penal Law, § 484, subd. 1), this sovereign State put the licensing power in one of its most powerful and most respected governmental bodies, the Board of Regents, a "citizens' board" which is at the head of the State's educational system. Censorship in New York is, therefore, carried on at the highest levels of responsible State Government.

In 1951, this court re-examined, in *Matter of Joseph Burstyn, Inc.,* v. *Wilson* (303 N. Y. 242) the question of the constitutionality of pre-censorship of films, and found no reason to change our earlier decision. Later, the Supreme Court of the United States, in the same *Burstyn* case (343 U. S. 495) decided for the first time (it had intimated this result in 1948 in *United States* v. *Paramount Pictures,* 334 U. S. 131, 166) that expression by means of motion pictures is included within the free speech and free press guarantee of the First and Fourteenth Amendments. Going further, the highest court held that the word "sacrilegious" provided no valid test or standard, since it subjected films to "conflicting currents of religious views" (*supra,* p. 504). But the Supreme [fol. 102] Court found it unnecessary, in *Burstyn,* to decide whether a State may censor motion pictures under a clearly drawn statute designed and applied to prevent, for instance, the showing of obscene films (pp. 505-506). Thus the *Burstyn* decision, while it ruled out "sacrilegious" as a permissible censoring standard, certainly did not strike down, completely, the police power of the States to pre-censor motion pictures. "It does not follow" said the court (*supra,* p. 502), "that the Constitution requires absolute freedom to exhibit every motion picture of every kind at all times and all places." Historically, of course, the First Amendment has never provided immunity for every possible use of language (*Robertson* v. *Baldwin,* 165 U. S. 275, 281; *Frohwerk* v. *United States,* 249 U. S. 204, 206).

The constitutional doctrine which forbids pre-censorship of the press (*Near* v. *Minnesota,* 283 U. S. 697), expresses,

primarily, the insistence of the American people that the publication of ideas and opinions, especially as to governments, public officers, and public questions should not be restrained here, as they had been elsewhere (see *Patterson* v. *Colorado*, 205 U. S. 454, 464, 465). And the doctrine itself has been subject always to an exception, as to publications which tend to corrupt morals or incite to crime or vice (see *People* v. *Gitlow*, 234 N. Y. 132; *People* v. *Most*, 171 N. Y. 423, 431; *Pathe Exch.* v. *Cobb*, 202 App. Div. 450, affd. 236 N. Y. 539, *supra*; *Patterson* v. *Colorado*, 205 U. S. 454, *supra*; *Schenck* v. *United States*, 249 U. S. 47; *Gitlow* v. *New York*, 268 U. S. 652, 666; *People* v. *Croswell*, 3 Johns. Cas. 336, 392 [1804]; Cooley on Constitutional Limitations [7th ed.], pp. 604-605). That exception usually finds application in post-punishment rather than pre-censorship, but the system of distribution and showing of motion pictures makes it feasible, if not necessary, to examine and license or refuse to license them before exhibition to audiences. We realize, as does everyone else, and as did the Supreme Court in 1915 in *Mutual Film Corp.* v. *Ohio Ind. Comm.* (*supra*) and in 1952 in *Joseph Burstyn, Inc.* v. *Wilson* (*supra*) that motion pictures have vast potentialities for evil, and we know, as practical people, that there is no effective way to suppress the damaging ones except by a system of censorship (see *Superior Films* v. *Department of Educ.*, 159 Ohio St. 315, April 29, 1953). "Justification for up-
[fol. 103] holding a censorship statute couched in indefinite terms may lie in the interest to be protected and not in semantics" (37 Minn. L. Rev. 211). So, unless and until so constrained by higher judicial authority, we will not say that the police power of our State cannot be used to keep such evil from our people.

2. Next, we answer the question as to the sufficiency, as a standard for licensing, of the statutory language: "immoral" and "tend to corrupt morals." We know that "immoral" is rather a sweeping term, of large and perhaps not mathematically delimited meaning, but we know, too, that if statutes could use only scientifically exact terminology, much of our statute law would be invalid. Words and phrases like "moral," "immoral," "good moral character," "impairing morals," etc., abound in New York statutes (see,

for instance, Social Welfare Law, § 448; Penal Law, § § 483, 485-a, 486, 494, 580, subd. 6; § § 1140-a, 1141, 1141-a, 1145, 1147, 1148, 1933; Education Law, §§ 2212, 3012, 3013, 3020, 6804; General Business Law, §§ 190, 191; Agriculture and Markets Law, §§ 57, 57a, and zoning statutes such as Village Law, § 175, and Town Law, § 261). In some of those statutes, the verbiage, because of context, limits itself to sexual morals— not so here, we think. Sexual impurity is only one form of immorality (see *Swearingen* v. *United States*, 161 U. S. 446, 451). This picture "La Ronde" could be classed as "immoral" in the narrower sense, too, but the statutory meaning here is the usual or dictionary one (including the law dictionaries), and its reference is to the generally accepted civilized code of morals—its prohibition is of material "*contra bonos mores.*" That, too, is the clearly intended meaning in several other censorship statutes (*Block* v. *City of Chicago*, 239 Ill. 251, 264, *supra*; *People ex rel. First, Nat. Pictures* v. *Dever*, 242 Ill. App. 1; *Schuman* v. *Pickert*, 277 Mich. 225, 229; see *United States* v. *One Obscene Book Entitled "Married Love,"* 48 F. 2d 821, 823). If it meant, in our statute, sexually vicious only, the word "immoral" would be tautological and repetitious, since it is there coupled with "obscene" and "indecent." And why should our Legislature have placed a ban on one kind, only, of immorality? "Immoral" (or its antonym "moral") is a listed standard in at least five (besides New York) State motion picture censorship laws (those of Pennsylvania, [fol. 104] Ohio, Virginia, Kansas, Maryland). Indeed, the very word "moral" in the Ohio law was taken in its usual broad sense and held to be sufficiently definite for these purposes, in *Mutual Film Corp.* v. *Ohio Ind. Comm.* in these words (236 U. S. 230, 245-246, *supra*) "The objection to the statute is that it furnishes no standard of what is educational, moral, amusing or harmless, and hence leaves decision to arbitrary judgment, whim and caprice * * *. But the statute by its provisions guards against such variant judgments, and its terms, like other general terms, get precision from the sense and experience of men and become certain and useful guides in reasoning and conduct. The exact specification of the instances of their application would be as impossible as the attempt would be futile. Upon such sense and experience, therefore, the law properly

relies." We think the Supreme Court there must have read "moral" in the meaning we give it here, and the Supreme Court there pointed out that, unless words of such seeming generality were valid in statutes, government itself would become impossible. There can be no objection to the use, in a statute, of a word like "immoral" which includes many things, all of which are intended by the Legislature to be covered; otherwise, there would be barred from statutory use such customary verbiage as "fraudulent," "due," "negligent," "arbitrary," "reasonable," etc. Legislatures use such words not "vaguely" but inclusively. That a word has many meanings, one or more of which are definitely pointed up by the surrounding verbiage, is no more reason for barring its use than if the word had one meaning only. It is too late to change the common usage of the word "immoral," or to ascribe absurdity to it, so as to invalidate a statute. Although the Supreme Court, in *Burstyn* (*supra*), reversed that part of the *Mutual Film Corp.* holding which deals with the free speech question, *Mutual's* rule as to the propriety of "moral" or "immoral," as a motion picture censorship standard in Ohio remains undisturbed, so far as we know. So the Ohio Supreme Court pointed out, on April 29, 1953, in *Superior Films* v. *Department of Educ.* (159 Ohio St. 315, *supra*).

Long ago our court (*Lyon* v. *Mitchell*, 36 N. Y. 235, 238) approved definitions of "morality" as " 'that science which teaches men their duty, and the reason of it' " and as [fol. 105] " ' the rule which teaches us to live soberly and honestly. It hath four chief virtues, justice, prudence, temperance and fortitude.' " In that opinion, in 1867, our great predecessors on this bench wrote that: "Sound morals, as taught by the wise men of antiquity, as confirmed by the precepts of the gospel * * * are unchangeable. They are the same yesterday and to-day." We see no reason to retreat from those ideas. "We are a religious people whose institutions presuppose a Supreme Being" (*Zorach* v. *Clauson*, 343 U. S. 306, 313). Our Federal and State Constitutions assume that the moral code, which is part of God's order in this world, exists as the substance of society. The people of this State have acted through their Legislature, on that assumption. We have not so cast ourselves adrift from that code, nor are we so far gone in cynicism, that the word

"immoral" has no meaning for us. Our duty, as a court, is to uphold and enforce the laws, not seek reasons for destroying them.

3. If there be validity to our answers above numbered 1 and 2, we will have no difficulty with the third question, that is, as to whether the Regents were justified in finding that "La Ronde" is immoral, and tends to corrupt morals. It is of no pertinence here that great literature of all ages, including the Sacred Scriptures, abounds with descriptions of rapes, fornications and adulteries. The difference here is that the whole theme, motif and subject matter of this film, its dominant and sole effect, is sexual immorality. The totality of it, and every part of it, is sexual immorality. The point is not that it depicts immoral conduct—it glorifies and romanticizes it, and conveys the idea that it is universal and inevitable. Are we as a court to say as matter of law that it does not thus "tend to corrupt morals"? This court should hold that the State of New York may prevent the publication of such matter, the obvious tendency of which is "to deprave or corrupt those whose minds are open to such immoral influences, and who might come into contact with it" (*People* v. *Muller*, 96 N. Y. 408, 411, following *Regina* v. *Hicklin*, L. R. 3 Q.B. 360, 369-370; see *People* v. *Doubleday & Co.*, 297 N. Y. 687, affd. 335 U. S. 848; *United States* v. *Dennett*, 39 F. 2d 564; *United States* v. *Levine*, 83 F. 2d 156). Such is the valid State policy and purpose, and we enforce it by affirming this Regents' determination.

The order should be affirmed, with costs.

[fol. 106] Conway, J., (concurring).

I am in entire accord with the opinion of Judge Froessel, but believe that we may properly go further and therefore I fully agree also with the view stated by Judge Desmond in his concurring opinion.

Dye, J. (dissenting).

By the decision about to be made, a majority of this court approves as a valid enactment, the New York motion picture licensing statute, notwithstanding that it provides for censorship in advance, which as we read it, constitutes an infringement of the basic civil right of freedom of speech

and publication contrary to due process (U. S. Const., 1st, 5th, 14th Amendts.; N. Y. Const., art. I, §§ 6, 8; Education Law, § 122). I must therefore record my dissent.

The question arises out of the refusal of the State Board of Regents to approve the issuance of a license to permit the showing of the motion picture film "La Ronde" for the reason, couched in the language of the statute, "that the said film is 'immoral' and that its exhibition 'would tend to corrupt morals' within the meaning of Section 122 of the Education Law."

The case is before us in an appeal as of right from an order of the Appellate Division, Third Judicial Department, entered in a proceeding under article 78 of the Civil Practice Act, at the instance of this appellant (Education Law, § 124), and heard by the Appellate Division in the first instance (Civ. Prac. Act, § 1296). When the petitioner, a California corporation and sole owner of the distribution rights of the said picture in the United States, first applied for an exhibitor's license (Education Law, §§ 120-122) the director of the motion picture division refused it on the ground that the picture was "immoral" and "would tend to corrupt morals". Following established practice in such circumstances, the petitioner re-edited the film and re-submitted its application, but even so the director again refused to issue a license. A review of his determination was then had before a three-man committee of the State Board of Regents (Education Law, § 124), which, after viewing the picture, as we have said, confirmed the director's determination. In the court below the confirmation of the determination and the dismissal of the proceedings was on the ground that the applicable [fol. 107] statute was a valid enactment and that confirmation was required under familiar doctrine limiting the function of a reviewing court whenever there is "warrant in the record and a reasonable basis in law" for the board's determination. In other words, if the issue is debatable, the action of the administrative body is to be upheld (*Matter of Mounting & Finishing Co.* v. *McGoldrick*, 294 N. Y. 104). However correct that may be as a rule of thumb in the review of administrative cases turning on a controverted issue of fact, it is inapplicable in a case involving funda-

mental civil rights secured by the State and Federal Constitutions for then a determination must be so clear, as the dissenting Judges in the court below observed, "that any conclusion to the contrary would not be entertained by any reasonable mind. It is wholly inconsistent with a constitutional guarantee to leave any debatable issue of morals, involved in any form of protected expression, to the final decision of an administrative agency." (*Matter of Commercial Pictures Corp.* v. *Board of Regents*, 280 App. Div. 260, 265.) In such a situation "the reviewing court is bound to re-examine the whole record" in the light of the challenge made (*Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495; *Universal Camera Corp.* v. *Labor Bd.*, 340 U. S. 474; *Niemotko* v. *Maryland*, 340 U. S. 268; *Norris* v. *Alabama*, 294 U. S. 587).

Since the decision in *Joseph Burstyn, Inc.* v. *Wilson* (343 U. S. 495, *supra*, revg. 303 N. Y. 242) there is no longer any doubt but that motion picture films enjoy the same constitutional freedom and protection accorded other media of human expression (cf. *United States* v. *Paramount Pictures*, 334 U. S. 131; *Stromberg* v. *California*, 283 U. S. 359) and this is so even though motion pictures as such are primarily designed to entertain at exhibitions conducted for private profit and even though motion picture films as such possess "a greater capacity for evil, particularly among the youth of a community, than other modes of expression" (*Burstyn, supra*, p. 502).

In the *Burstyn* case *(supra)* the Board of Regents had refused a license to show the motion picture entitled "The Miracle" on the ground that it was "sacrilegious" within the meaning of section 122 of the Education Law. When the case was in this court we approved such determination in reliance on the validity of regulation by prior censor-[fol. 108] ship in accordance with our decision in *Pathe Exch.* v. *Cobb* (236 N. Y. 539, affg. 202 App. Div. 450). That decision, in turn, had followed *Mutual Film Corp.* v. *Ohio Ind. Comm.* (236 U. S. 230), *Mutual Film Co.* v. *Ohio Ind. Comm.* (236 U. S. 247), and *Mutual Film Corp.* v. *Kansas* (236 U. S. 248), in which the United States Supreme Court had approved as a valid enactment in Ohio, a pre-censorship statute.

We note that in deciding the *Burstyn* case (*supra*, pp. 505-506) the United States Supreme Court found it unnecessary to pass on the issue of prior censorship preferring to leave such question until presented "under a clearly drawn statute designed and applied to prevent the showing of obscene films" since the term "sacrilegious", the sole standard under attack, afforded an adequate basis for reversal. Nonetheless, that is not to say the learned court was unmindful of the iniquity of prior restraint which (in the field of publication) they long before had ruled (p. 503) was an "infringement upon freedom of expression to be especially condemned" (*Thomas* v. *Collins*, 323 U. S. 516; *Lovell* v. *Griffin*, 303 U. S. 444; *Grosjean* v. *American Press Co.*, 297 U. S. 233; *Near* v. *Minnesota*, 283 U. S. 697; *Patterson* v. *Colorado*, 205 U. S. 454).

Since the courts no longer see any distinction separating motion picture film from the protection accorded other media of communication, it follows as a matter of reason and logic that prior censorship of motion pictures is as to them as it is in other fields of expression, a denial of due process. In saying this we are, of course, mindful of the correlative obligation that in its exercise and enjoyment such right is not unlimited and absolute at all times and under all circumstances (*Chaplinsky* v. *New Hampshire*, 315 U. S. 568; *Cox* v. *New Hampshire*, 312 U. S. 569) but that such freedom may properly be restrained when inimical to the public welfare (*Gitlow* v. *New York*, 268 U. S. 652) and the State may punish its abuse (*Near* v. *Minnesota*, *supra*). It is equally well established that before such limitation may be imposed the abuse complained of is to be examined in all cases to determine whether it is of such a nature "as to create a clear and present danger [and] will bring about the substantive evils that Congress has a right to prevent" (*Schenck* v. *United States*, 249 U. S. 47, 52), which danger should be "apparent and imminent" [fol. 109] (*Thornhill* v. *Alabama*, 310 U. S. 88) such, for example, as a threat to overthrow the government by unconstitutional means (*Dennis* v. *United States*, 341 U. S. 494). By the same token, when public safety is involved, its restraint will be approved as a proper exercise of the police power (*Feiner* v. *New York*, 340 U. S. 315, affg. 300

N. Y. 391; *Kovacs* v. *Cooper*, 336 U. S. 77) or, to state it differently, there must be present some "overriding public interest" (see dissenting opinion per FULD, J., in *Matter of Joseph Burstyn, Inc.*, v. *Wilson, supra*, p. 269; *Thornhill* v. *Alabama, supra*), mere fear of possible injury is not enough (*Terminiello* v. *Chicago*, 337 U. S. 1).

Having in mind these well-recognized principles, it is pertinent to inquire what if anything there is about "La Ronde" that requires denial of constitutional safeguards and the imposition of the sanction of prior restraint. Is it because a showing would offend against some overriding need—would constitute a danger clear and present? We think not.

According to the record, the picture "La Ronde" since its admission through Customs without objection (U. S. Code, tit. 18, § 1462; U. S. Code, tit. 19, § 1305) has been exhibited throughout the United States in cities and towns in the States of Arizona, California, Colorado, Connecticut, Delaware, Florida, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Missouri, New Jersey, Oklahoma, Oregon, Texas and Washington, D. C. Nowhere has the showing of "La Ronde" been banned except in New York. While experience elsewhere is not binding on the courts in New York, the opinions of qualified critics may be considered (*United States* v. *One Book Entitled Ulysses*, 72 F. 2d 705). We deem it significant that in the States of Louisiana (La Rev. Stat., tit. 4, §§ 301-307) and Massachusetts (Mass. Ann. Laws, ch. 136, §§ 2-4) having censorship laws, though to be sure, not as comprehensive as that in New York, the picture has had an unhampered showing as well as in places where municipal codes are in effect such as Detroit, Michigan; Salem, Oregon and Houston, Texas, to mention a few, a circumstance indicating that in a large segment of society the picture is not offensive per se. Such a showing in other States and cities of this country, where prior restraint was available and not invoked, and elsewhere having no such statutes, all without untoward incident or complaint, is a [fol. 110] convincing testimonial that it is not inimical to the public peace, welfare and safety. On the contrary, we are told that the showing elsewhere has been well received and has elicited favorable acclaim by the premier dramatic critics of eminent publications in which we may read:

"*La Ronde* is all of a piece, as any round should be, setting up a mocking harmony of desire and disillusion, vanity, pleasure and deceit. It is never prurient, smirking or pornographic. For all the intimacy of its nuances, the film's approach is dryly detached and completely charming; it spoofs sex rather than exploits it, much as Britain's satiric *Kind Hearts and Coronets* makes sport of murder." (*Time* Magazine, Oct. 22, 1951.)

"Here is a lovely motion picture, a gay, a glad, a sad, a sentimental movie * * * about Vienna at the turn of the century, the Vienna of candlelight and carriages, of wine, women and waltzes. * * * All this is told with a combination of irony, candor and gentleness that makes of the whole a total gem of a motion picture. * * * a picture about illicit love, but it is told without prudishness and with a deftness, discretion and understanding that make it more moral than most censor-shackled pictures on the subject." (*Daily News*, Los Angeles, Sept. 21, 1951.)

"The * * * players * * * represent the cream of France's romantic actors." (*The Evening Star*, Washington, D. C., July 28, 1951.)

"The players * * * are among the cream of French talent and virtually flawless here." (*The Los Angeles Times*, Sept. 21, 1951.)

"* * * a splendid and glittering cast that includes Anton Walbrook, Gerard Philipe, Isa Miranda, Dannielle Darrieux, Daniel Gelin, Simone Simon, Jean-Louis Barrault, Fernand Gravet, and Odette Joyeux. * * * their portrayals have that quality of nuance that makes a second viewing almost obligatory. * * * Through the strata of a world-weary Viennese society the story spirals, until we find we have arrived at much the same point from which we have begun. It's more sad than bitter, more ironic than funny, and there's some haunting little message underneath it all, though, to be sure, you are never quite told what it is. * * * delicately done and in excellent taste." (*Saturday Review of Literature*, Nov. 10, 1951.)

[fol. 111] In addition, it has been shown in the principal cities of most foreign countries and has received special recognition for merit from several motion picture academies as, for instance, in Cuba as the best film of 1951, by the British Film Academy in London as the best film from any

source, British or foreign, and in 1952, a nomination for an award at the Hollywood Academy.

Nonetheless if it may be said that prior censorship serves a necessary and needful public purpose warranting the abridgement of the right of free speech and press, it remains for the statute under review to meet the test of definiteness required to constitute a valid delegation of legislative power to an administrative agency. Unless it does so, it cannot be regarded as the "clearly drawn statute" envisioned by the Supreme Court (*Burstyn, supra*, p. 506; *Kunz* v. *New York*, 340 U. S. 290; *Winters* v. *New York*, 333 U. S. 507; *Connally* v. *General Constr. Co.*, 269 U. S. 385; *Small Co.* v. *American Sugar Ref. Co.*, 267 U. S. 233; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81) and we too apply such principle whenever needed (*Packer Collegiate Inst.* v. *University of State of N. Y.*, 298 N. Y. 184; *Matter of Fink* v. *Cole*, 302 N. Y. 216; *Matter of Small* v. *Moss*, 279 N. Y. 288).

It is indeed significant that when the Legislature enacted the censorship statute under review it omitted to provide any criteria or standards to guide the Board of Regents in performing the administrative functions required of it, but was content to use language of broad and general import leaving its meaning and application to the individual judgment of its director of the motion picture division in the first instance (§ 122) or if denied, to a committee of three members of the board (§ 124).

Indefiniteness affords opportunity for arbitrariness, the tendency to which is nowhere better illustrated than in the field of administrative law. It is for this reason that delegation of legislative power is carefully scrutinized, whether to a private agency (*Matter of Fink* v. *Cole, supra*) or to a governmental agency (*Packer Collegiate Inst.* v. *University of State of N. Y., supra; Matter of Small* v. *Moss supra*). If this is not enough, then the board itself has been equally delinquent in failing to adopt rules and regulations for the guidance of its motion picture division in the exercise of censorship powers, but has left the generality [fol. 112] of the statutory language to gain precision "from sense and experience" (*Mutual Film* cases, *supra*), a method no longer approved (*Burstyn*), and is particularly objectionable here as it vests unlimited restraining control

over motion pictures in a censor limited only by what an individual director of the motion picture division or, upon review, by what three members of the board itself happen to think about a particular picture at a given time (cf. *Winters* v. *New York, supra; Geilling* v. *Texas*, 343 U. S. 960). Such lack, it goes without saying, leaves an appellate court at a very great disadvantage. We do not know what standards guided the agency in making its determination. To supply such legislative omission by judicial fiat is not permissible under the division of governmental powers as fixed by the Constitution. It has long been recognized that courts may not usurp the legislative function under the guise of adjudication. The evils of allowing an administrative agency, however worthy its purpose, to function without proper legislative guidance is well illustrated by this very case. The lack of proper standards and guidance has led the State Board of Regents into a most surprising record of inconsistency and illustrates at first hand the evils of slap-dash censorship. For instance, we do not know whether they apply the terms "immoral" and "tend to corrupt morals" to pictures dealing with sex impurity or to pictures dealing with any matter which could be deemed *contra bonos mores*. Here we have a picture which, concededly, is not obscene or indecent but which nonetheless is banned from a New York showing because deemed "immoral" and its exhibition "would tend to corrupt morals" which is difficult to reconcile with the issuance of permits to show other pictures dealing not only with illicit love but also crime such as Dreiser's "American Tragedy" (based on *People* v. *Gillett*, 191 N. Y. 107), "A Street Car Named Desire" and "The Outlaw", and those of a lurid type whose blow-up posters call attention to "Outcast Girls", "Female Sex", "Naked Realism". The case at hand is the only instance brought to our attention where denial has been based solely on the term "immoral" which the Regents applied because "promiscuity" is the central theme. True, the term "immoral" has been used in numerous other instances but always, we note, in juxtaposition with the word "obscene" [fol. 113] or "indecent". The term "obscene" as used in the criminal statutes, has been interpreted in the United States Supreme Court as meaning the subject matter must be of a "lewd, lascivious and obscene tendency, calculated

to corrupt and debauch the mind and morals of those into whose hands it might fall" (*Swearingen* v. *United States*, 161 U. S. 446, 451), and in our own court we have said that the test of an obscene book is whether "the tendency of the matter charged as obscenity is to deprave or corrupt those whose minds are open to such immoral influences, and who might come into contact with it" (*People* v. *Muller*, 96 N. Y. 408, 411, following *Regina* v. *Hicklin*, L. R. 3 Q. B. 360, 369-370; *People* v. *Doubleday & Co.*, 297 N. Y. 687, affd. 335 U. S. 848).

The term "immoral" when not connected with "obscene" —and here it is not—for indeed the motion picture "La Ronde" was not banned upon the ground of obscenity—has a variety of meanings varying according to time, geography and to some extent, subjective judgment, (Cardozo, Paradoxes of Legal Science: *Matter of Foy Productions* v. *Graves*, 253 App. Div. 475; *Parmelee* v. *United States*, 113 F. 2d 729; *United States* v. *Kennerley*, 209 F. 119). The lexicographers have defined "immoral" as the opposite of moral (Oxford Dictionary) which term may and does include illicit sexual behavior (Funk & Wagnalls) but the meaning is not limited to sex impurity but includes in addition offenses hostile "to public welfare" (Black's Law Dictionary), "inimical to rights or * * * interests of others," "corrupt," "depraved" and sometimes "unprofessional" conduct or (42 C. J. S., pp. 395-396), to state it broadly, anything *contra bonos mores*.

Resort to the criminal statutes dealing with obscenity and the cases construing such statutes are of little help in solving our present problem for here we deal with a licensing statute authorizing restraint in advance. In the one we deal with evidentiary requirements sufficient to support the conviction beyond "reasonable doubt" while in the other when the issue is debatable "some" evidence is sufficient. In the one the proof must meet the standards of the hearsay rule to assure competency, relevance and materiality while in the other formal rules of evidence may be dispensed with entirely. Criminal statutes are designed to apprise the citizen of what constitutes an offense against society in ad- [fol. 114] vance of the fact. The term "immoral" as used in this pre-censorship statute, without more, affords little help in advising the citizen of what constitutes a violating

offense. All that the petitioner has to guide him here is the circumstance that wherever shown in the United States, except New York, the picture "La Ronde" does not offend.

To strike the term "immoral" and the words "tend to corrupt morals" from the statute as indefinite and undefinable will work no serious result. For years New York State has had statutes dealing with obscenity and indecency broad enough to sanction "after the fact" criminal prosecution and punishment, application of which has successfully regulated the publication and sale of books and periodicals without prior censorship (Penal Law, § 1141; cf. *Winters* v. *New York, supra*), as well as statutes sanctioning the punishment of persons presenting obscene, indecent, immoral or impure drama, plays or exhibition shows or entertainment (Penal Law, § 1140-a).

In addition, the word "obscene," when compared with the word "immoral" has a clear and authoritative judicial definition. The Federal standard is whether the book taken as a whole has a "libidinous effect" (*Hannegan* v. *Esquire, Inc.*, 327 U. S. 146; *United States* v. *One Book Entitled Ulysses*, 72 F. 2d 705, *supra*). In New York the test is "whether the tendency of the [work] is to excite lustful and lecherous desire" (*People* v. *Wendling*, 258 N. Y. 451, 453; *People* v. *Eastman*, 188 N. Y. 478, 480; *People* v. *Muller*, *supra*). Under this definition "La Ronde" is certainly not "obscene." It has been condemned only on the ground that it is "immoral" and that its presentation "would tend to corrupt morals." The statute sets up no standard defining the term "immoral" and, unlike the word "obscenity" in the criminal statutes, there are no judicial opinions which set forth a workable guide for the censor. As the dissenting opinion in the Appellate Division noted (p. 266) "La Ronde," according to the Regents, "deals with illicit love, usually regarded as immoral. But so is murder. The theme alone does not furnish a valid ground for previous restraint. As to its presentation corrupting the morals of the public, this issue is highly debatable. The record indicates a vast [fol. 115] body of informed opinion to the contrary. Under such circumstances the action of the Regents impinges on petitioner's constitutional right of free expression." Since reasonable men may differ on the import and effect of "La Ronde", it follows that there is not a "clear and present

danger" sufficiently imminent to override the protection of the United States Constitution (*Thornhill* v. *Alabama*, *supra*, p. 105).

Under all the circumstances, and this includes the inconsistency between the varying views expressed in the opinions for affirmance herein, we deem the terms "immoral" and "tend to corrupt morals" as used in the statute to be so indefinite as to require reversal here. Indefiniteness in motion picture censorship statutes was condemned in *Burstyn* (*supra*) and later in *Gelling* v. *Texas* (343 U. S. 960, *supra*). There the United States Supreme Court dealt with an ordinance of the city of Marshall, Texas, which authorized a local board of censors to deny permission to the showing of a motion picture when, in the opinion of the board, it was "of such character as to be prejudicial to the best interests of the people of said City"—inartistic language to be sure, but nonetheless having an intent to restrain the showing of motion pictures inimical to the public interest. Two Justices wrote concurring opinions that elucidate the bare *Per Curiam* for reversal, Mr. Justice Frankfurter seeing offense to the Fourteenth Amendment on the score of indefiniteness (citing *Burstyn* and *Winters*) while Mr. Justice Douglas said (p. 961): "The evil of prior restraint, condemned by *Near* v. *Minnesota*, 283 U. S. 697, in the case of newspapers and by *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495, in the case of motion pictures, is present here in flagrant form. If a board of censors can tell the American people what it is in their best interests to see or to read or to hear (cf. *Public Utilities Comm'n* v. *Pollak*, 343 U. S. 451), then thought is regimented, authority substituted for liberty, and the great purpose of the First Amendment to keep uncontrolled the freedom of expression defeated."

This thought is not new for indeed thirty years ago a distinguished Governor of this State in his message to the Legislature recommending repeal of an almost identical censorship statute (L. 1921, ch. 715, § 5) had this to say: [fol. 116] "Censorship is not in keeping with our ideas of liberty and of freedom of worship or freedom of speech. The people of the State themselves have declared that every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no law shall be passed to restrain or abridge liberty of

speech or of the press. This fundamental principle has equal application to all methods of expression." (Public Papers of Alfred E. Smith [1923], pp. 60, 61.)

As has been said in a great variety of ways, we deem the evil complained of here is far less dangerous to the community than the danger flowing from the suppression of clear constitutional protection. In our zeal to regulate by requiring licenses in advance we are prone to forget the struggle behind our free institutions. We must keep in mind on all occasions that beneficent aims however laudable and well directed can never serve in lieu of constitutional powers (*Carter* v. *Carter Coal Co.*, 298 U. S. 238) for as was said in *Lovell* v. *Griffin* (303 U. S. 444, 451, *supra*), "The struggle for the freedom of the press was primarily directed against the power of the licensor."

It is no answer to say that the exhibition of motion pictures has a potential for evil which can not be successfully dealt with except by censorship in advance. Such a conclusion overlooks the very significant circumstance that other media of expression are not so censored, for they may not be, but are nonetheless successfully controlled by our penal laws (Penal Law, § 1140-a) which have been resorted to whenever necessary. One of the most recent occasions was the banning of "The Outlaw", a motion picture, by the commissioners of license and the police in New York City, because deemed obscene, indecent and immoral, notwithstanding that the Board of Regents had theretofore issued it a license (*Hughes Tool Co.* v. *Fielding*, 297 N. Y. 1024, affg. 272 App. Div. 1048). Reported instances of resort to criminal sanctions as a method of control are relatively infrequent but this is not at all surprising as the industry itself has its own Production Code in which it recognizes its responsibility to the public to provide approved entertainment in connection with which the potential power of the public boycott is not overlooked, exerting as it does, a direct influence in the box office, on the profitable operation of [fol. 117] which the producers must depend (cf. Motion Pictures and the First Amendment, 60 Yale L. J. 696).

In conclusion then, it must be said that the New York censorship statute as applied in advance to the exhibition of motion pictures infringes constitutional freedom of speech and press, that the within case is not so exceptional

as to require banning under a valid exercise of the police power and that the statute is invalid in any event for lack of definitive administrative criteria.

The order appealed from should be reversed and the matter remitted to the Board of Regents with direction to issue a license.

FULD, J. (dissenting):

I agree with Judge Dye and, for myself, would add these words only to underscore what he has written.

That the freedom of expression assured by the First Amendment is not limited to "the air-borne voice, the pen, and the printing press" (Chafee, Free Speech in the United States [1941], p. 545), but extends as well to motion pictures, is now beyond dispute. (See *Gelling* v. *Texas*, 343 U. S. 960; *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495.) While I conceive that any legislation imposing a previous restraint on the exhibition of moving pictures is condemned by the Constitution, I do not believe it necessary to invoke that broad principle to reach a decision in this case. Here again, as in *Burstyn*, the censorship statute must fall because of the lack of a sufficiently definite standard or guide for administrative action.

The Education Law provision under review authorizes the Regents to prohibit, in advance, the exhibition of any picture which they deem "immoral" or which they conclude may "tend to corrupt morals". Terms of such vague and undefined limits, however, fail to furnish the objective criterion necessary to insure that there shall be no interference with the exercise of rights secured by the First Amendment. By attempting to cover so much, the catch-all provision barring motion pictures which the censors believe "immoral" effectively covers nothing. The ephemeral and ambiguous character of the term is highlighted by the variant views of the very judges who now write to uphold the statute. Words [fol. 118] as subjective as those under consideration find meaning only in the mind of the viewer and observer, render impossible administration of the statute and offend against due process. "Prohibition through words that fail to convey what is permitted and what is prohibited for want of appropriate objective standards, offends Due Process in

two ways. First, it does not sufficiently apprise those bent on obedience of law of what may reasonably be foreseen to be found illicit by the law-enforcing authority, whether court or jury or administrative agency. Secondly, where licensing is rested, in the first instance, in an administrative agency, the available judicial review is in effect rendered inoperative." (*Joseph Burstyn, Inc.* v. *Wilson, supra*, 343 U. S. at p. 532, per Frankfurter, J., concurring; see, also, *Gelling* v. *Texas, supra*, 343 U. S. 960; *Musser* v. *Utah*, 333 U. S. 95.)

I would reverse and annul the determination of the Board of Regents.

Lewis, J., concurs with Froessel, J.; Desmond, J., votes for affirmance in a separate opinion; Conway, J., in a memorandum, concurs in the opinions of Froessel and Desmond, JJ.; Dye, J., dissents in an opinion in which Fuld, J., concurs and votes for reversal in a separate opinion; Loughran, Ch. J., deceased.

Order affirmed.

[fol. 119] In Court of Appeals of State of New York

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 28th day of May in the year of our Lord, one thousand nine hundred and fifty-three, before the Judges of said Court.

Witness, The Hon. Edmund H. Lewis, Chief Judge, Presiding. Raymond J. Cannon, Clerk.

Remittitur—May 28, 1953

[fol. 120] No. 371

In the Matter of Commercial Pictures Corporation, Appellant,

vs.

The Regents of the University of the State of New York, Respondents

For an Order

Be it Remembered, That on the 4th day of December in the year of our Lord one thousand nine hundred and fifty-two, Commercial Pictures Corporation, the appellant in this cause, came here unto the Court of Appeals, by Florence Perlow Shientag, and Nemeroff, Jelline, Danzig & Paley, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And The Regents of the University of the State of New York, the respondents in said cause, afterwards appeared in said Court of Appeals by Charles A. Brind, Jr., their attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

[fol. 121] Whereupon, The said Court of Appeals having heard this cause argued by Mrs. Florence Perlow Shientag, of counsel for the appellant, and by Mr. Charles A. Brind, Jr., of counsel for the respondents, brief filed by amicus curiae, and after due deliberation had thereon, did order

and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

[fol. 122] Therefore, it is considered that the said order be affirmed, with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

Raymond J. Cannon, Clerk of the Court of Appeals of the State of New York.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 123] In Supreme Court of New York, Special Term, County of Albany

[Title omitted]

Order Making the Order of Court of Appeals the Order of Supreme Court of New York—June 12, 1953

The above named petitioner-appellant having appealed to the Court of Appeals of the State of New York from the order of the Appellate Division of this Court, Third Department, entered in the office of the Clerk of the County of Albany on the 27th day of June, 1952, confirming, two Justices dissenting, the determination of the respondents-respondents together with Fifty ($50.00) Dollars costs and disbursements, the said proceeding having been commenced

by the service of a notice of motion and petition, verified the 26th day of October, 1951, and transferred for a disposition to the Appellate Division of this Court, Third Department, and from each and every part of said order of confirmance, as well as from the whole thereof; and the said appeal having been duly argued in the said Court of Appeals, and after due deliberation the Court of Appeals having ordered and adjudged that the order of the Appellate Division of the Supreme Court appealed from herein be affirmed, with costs, and having further ordered that the proceedings herein be remitted to this Court and to be proceeded upon according to law; and the remittitur from the said Court of Appeals having been filed herein,

Now, on motion of Charles A. Brind, Jr., Esq., Attorney for respondents-respondents herein, it is

[fols. 124-126] Ordered, that the order of said Court of Appeals be and the same hereby is made the order of this Court; and that the order entered in the office of the Clerk of the County of Albany on the 27th day of June, 1952 be, and the same hereby is, affirmed with costs.

Enter.

Roscoe V. Elsworth, J.S.C.

[fol. 127] In Court of Appeals of the State of New York

[Title omitted]

Petition for Appeal—August 4, 1953

Considering itself aggrieved by the final judgment and order of this Court, made and entered in the above proceedings on May 28th, 1953, the Petitioner herein hereby prays that an appeal be allowed to the Supreme Court of the United States from said judgment and order and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by Petitioner; and that the material parts of the record, proceedings, exhibits and papers upon which the said final judgment and order were based, duly authenticated, be sent to the Supreme Court of the United

States in accordance with the rules in such cases made and provided.

Dated: New York, N. Y., August 4th, 1953.

Respectfully submitted, Florence Perlow Shientag, Attorney for Petitioner-Appellant, 9 East 40th Street, New York 16, N. Y.

[fol. 128] In Court of Appeals of State of New York

[Title omitted]

Order Allowing Appeal—August 7, 1953

Commercial Pictures Corporation, having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final judgment and decree of this Court in this cause entered on May 28th, 1953 and from each and every part thereof, and having presented their assignment of errors and prayer for reversal and their statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided.

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

It is further ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of $250, with good and sufficient surety, and shall be conditioned as may be required by law.

It is further ordered that citation shall issue in accordance with law.

Dated: August 7, 1953.

Edmund H. Lewis, Chief Judge of the Court of Appeals of the State of New York.

[fol. 129] Citation in usual form omitted in printing.

[fol. 130] In Court of Appeals of State of New York

[Title omitted]

Assignment of Errors—August 4, 1953

Commercial Pictures Corporation, the Petitioner in the above-entitled cause, in connection with its appeal to the Supreme Court of the United States, hereby files the following Assignment of Errors upon which it will rely in its prosecution of the appeal from the judgment and order of the Court of Appeals of the State of New York entered in the above-entitled cause.

The Court of Appeals of the State of New York erred in the following respects:

1. In holding that motion pictures are not protected by the free speech guarantees of the First and Fourteenth Amendments of the Constitution of the United States.

2. In holding that previous restraint or censorship, as to the exhibition of motion pictures does not violate the First and Fourteenth Amendments to the Constitution of the United States.

3. In holding that the denial of the right to publicly exhibit Petitioner's motion picture film, "La Ronde", because the film was found by respondents to be "immoral" and such as "would tend to corrupt morals", was not an abridgement of freedom of speech or of the press in contravention of the First and Fourteenth Amendments to the Constitution of the United States.

[fols. 131-133] In holding that sections 120, 122, 124, 129 and 131 of the New York Education Law, which prohibit the exhibition of a motion picture film until a license therefor has been granted by administrative officers designated therein, and which provide for the denial of a license to any film which such administrative officers find to be "immoral" or such as "would tend to corrupt morals", do not abridge freedom of speech or of the press, in contravention of the First and Fourteenth Amendments to the Constitution of the United States.

5. In holding that Section 122 of the New York Education Law providing for the denial of a license to publicly exhibit any motion picture film if found to be "immoral" or such as

"would tend to corrupt morals" is not so vague and indefinite that its enforcement violates the "due process" clause of the Fourteenth Amendment to the Constitution of the United States as well as the free speech guarantees of the First Amendment to the Constitution of the United States.

6. In holding that the denial of a license to exhibit the film, "La Ronde", on the ground that it is "immoral" and "would tend to corrupt morals" did not deprive petitioner of property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

7. In holding that Section 122 of the New York Education Law was properly applied by the respondents, the Regents of the University of the State of New York, and that the motion picture "La Ronde" is "immoral" or "would tend to corrupt morals", and that the said motion picture is of such a character that the First Amendment to the Constitution of the United States permits a State to exclude from public view.

8. In holding that the respondents were not delinquent in failing to adopt definite and objective rules and regulations for the guidance of the Motion Picture Division of the New York State Department of Education in the exercise of the censorship powers conferred by Section 122 of the New York Education Law.

Wherefore, Petitioner prays that the final judgment and order of the Court of Appeals of the State of New York in this case be reversed, and that Petitioner be granted such other and further relief as the Court may deem just and proper.

Dated: August 4th, 1953.

Florence Perlow Shientag, Attorney for Petitioner-Appellant, Office & P. O. Address, 9 East 40th Street, New York 16, N. Y.

[fols. 134-137] Statement Required by Paragraph 2, Rule 12, of the Rules of the Supreme Court (omitted in printing).

[fols. 138-141] Affidavit of Service (omitted in printing).

[fol. 142] In Court of Appeals of State of New York

In the Matter of the Application of Commercial Pictures Corporation, Petitioner-Appellant, for an Order Against The Regents of the University of the State of New York, Respondents-Appellees

Praecipe

To the Clerk of the Supreme Court of the State of New York, Albany County:

You will please prepare a transcript of the Record in the above-entitled cause, to be transmitted to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

	Record on Appeal Page
1. Statement under Rule 234	1
2. Order transferring proceedings to Appellate Division	2
3. Stipulation	5
4. Notice of Motion	6
5. Petition of Commercial Pictures Corporation in support of the motion, together with	7
Exhibit A annexed to the petition	12
Exhibit B annexed to the petition	14-25
Exhibit C annexed to the petition	26-27
Exhibit D annexed to the petition	28-29
6. Exhibit No. 1—Motion Picture "La Ronde"	30
7. Affidavit of Gaston Hakin in support of the motion	30
8. Answer	35
9. Exhibit 1 annexed to answer	39
[fol. 143]	
10. Exhibit 2 annexed to Answer	42
11. Exhibit 3 annexed to Answer	46
12. Exhibit 4 annexed to Answer	46
13. Affidavit of No Opinion	48
14. Waiver of Certification	49
15. Sunday News article, April 13, 1952	52

16. Saturday Review of Literature, November 10, 1951 55
17. Theatre Arts, December, 1951 57
18. The Film Daily of January 16, 1952 62
19. New York Herald-Tribune, February 20, 1952 62
20. Variety, February 26, 1952 63
21. Detroit Free Press, March 20, 1952 64
22. The Film Daily, February 13, 1952 67
23. Additional papers on appeal to the Court of Appeals 68
24. Notice of appeal to the Court of Appeals 69
25. Order of affirmance of Appellate Division 71-72
26. Decision of the Appellate Division 73
27. Opinion of the Appellate Division 74-83
28. Affidavit as to Certification of record of Court of Appeals 84
29. Order of the Court of Appeals affirming Order of the Appellate Division
30. Order of the Supreme Court, State of New York, Albany County, entered on the remittitur of the Court of Appeals
31. Opinion of the Court of Appeals
32. Petition for Appeal to the Supreme Court of the United States
33. Order of Hon. Edmund H. Lewis, Chief Judge of the Court of Appeals of the State of New York, allowing said appeal
[fol. 144]
34. Citation on Appeal
35. Assignment of Errors
36. Statement under Rule 12 of the Rules of the Supreme Court of the United States, as to the Jurisdiction of the Supreme Court of the United States
37. Statement directing attention to Rule 12, Paragraph 3, of the Rules of the Supreme Court of the United States

38. Proof of service upon the respondents of the said Petition, Order, Citation, Assignment of Errors, Statement as to Jurisdiction, Statement directing attention to Rule 12, Paragraph 3, and this Praecipe
39. This praecipe
40. Letter from Random House, Inc. to Petitioner's attorney herein, dated May 12th, 1952, a photostatic copy of which is annexed hereto

The film of the motion picture "La Ronde" shall be physically delivered and deposited, in accordance with Rule 18, Paragraph 1, of the Rules of the Supreme Court of the United States, and shall, if request is made, be exhibited to the Supreme Court of the United States as an exhibit on this appeal.

The transcript of the record to be filed in the Supreme Court of the United States shall be prepared as required by law and the Rules of this Court and the Rules of the Supreme Court of the United States, to be filed in the Office of the Clerk of the Supreme Court of the United States in Washington, D. C. on or before the 25th day of August, 1953.

Florence Perlow Shientag, Attorney for Petitioner-Appellant, 9 East 40th Street, New York 16, N. Y.

[fols. 145-147] Random House, Inc., The Modern Library
457 Madison Avenue, New York 22, N. Y.
Saxe Commins, Editor.

May 12, 1952.

Mrs. Florence Shientag,
Room 422,
U. S. Courthouse,
Foley Square, New York.

Dear Florence Shientag,

Our records show that we published in the Modern Library Reigen: *The Affairs of Anatole and Other Plays*, by Arthur Schnitzler, in 1933. Translations were by Marya Mannes and Grace Isabel Colbron. This book was with-

drawn from the series in 1940. The reason for the withdrawal is that public interest in the plays had dwindled to the point where it was no longer advisable, on commercial grounds, to keep the book in print. At no time was any question raised about the propriety of these plays. The sale was quite adequate and the reception of the volume praiseworthy. Copyright for the translations is held by Random House, Inc., publishers of the Modern Library.

I trust that this provides you with the information you seek.

Sincerely, Saxe Commins.

SC:MB.

[fol. 148] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed August 28, 1953

Pursuant to Rule 13, Paragraph 9, of the Rules of the Supreme Court of the United States, the above-named appellant hereby states that it adopts for its Statement of Points upon which it intends to rely in its appeal to this Court the points contained in its Assignment of Errors heretofore filed.

The above-named appellant hereby designates the entire record, as heretofore filed in the above entitled case, consisting of the items enumerated in the Praecipe heretofore served and filed by the appellant, for printing by the Clerk of this Court.

Dated: New York, N. Y., August 27th, 1953.

Florence Perlow Shientag, Attorney for Petitioner-Appellant, 9 East 40th Street, New York 16, N. Y.

[fols. 149-150] *Duly sworn to by Sylvia B. Easton. Jurat omitted in printing.*

[fol. 151] [File endorsement omitted.]

[fol. 152] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 274

ORDER NOTING PROBABLE JURISDICTION—October 26, 1953

Appeal from the Court of Appeals of the State of New York

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is transferred to the summary docket and assigned for argument immediately following No. 217, Superior Films, Inc., vs. Department of Education of the State of Ohio, etc.